

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

27th Dec 2024 - 06th Jan 2025

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1. Principles of Natural Justice in Environmental Law

The Supreme Court of India, addressed critical procedural lapses in environmental law adjudication by the National Green Tribunal (NGT) in the cases of **Grasim Industries Limited v. State of Madhya Pradesh and Another**.

Key Findings: The Supreme Court highlighted that the appellant, Grasim Industries, was neither impleaded as a party before the NGT nor given an opportunity to present its case. Despite an impleadment application by the appellant, the NGT dismissed it and proceeded to adjudicate based on a report submitted by a Joint Committee without notice to the appellant.



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The Court stated, "The approach adopted by the NGT clearly smacks of condemning a person unheard" and held the procedure as contrary to the settled principles of natural justice.

Procedural Errors

- **Non-Impleadment of Affected Party:** The NGT's decision to exclude Grasim Industries as a respondent was found untenable. The Court observed that without impleadment, any order adversely affecting the appellant lacked legal sanctity.
- **Outsourcing Adjudicatory Functions:** The Court criticized the NGT for relying solely on the Joint Committee's report without conducting an independent evaluation. This, it held, undermined the tribunal's role as an adjudicatory body under the National Green Tribunal Act, 2010.

Directions by the Supreme Court

The impugned orders were quashed, and the matters were remitted to the NGT for fresh consideration with the directive that the appellant must be impleaded as a party respondent. The Court stressed the need for strict compliance with procedural fairness in future proceedings.

2. Authorized Signatory Not Liable as 'Drawer' Under Section 148 of N.I. Act

The Supreme Court in *Bijay Agarwal v. M/s Medilines* reiterated that the official signatory of the company does not assume the status of a 'drawer of a cheque' to attract the liability for payment of compensation under Section 148 of the Negotiable Instruments Act, 1881 ("N.I. Act").

The Court clarified that liability for payment of compensation as well as deposit to suspend the sentence pending the appeal could only be fastened upon the drawer of the cheque, and not on the company's official who acted as an authorized signatory of the company.

"To wit, as in the case of the position qua Section 143A, NI Act, merely because an officer of a company concerned is the authorised signatory of the cheque concerned by itself will not make such an officer 'drawer of the cheque' under Section 148, NI Act, so as to empower the Appellate Court, in an appeal against conviction for an offence under Section 138, NI Act, to direct to deposit compensation of any sum under Section 148(1), of the NI Act.", the Court held.

3. Supreme Court Guidelines on Death Penalty Execution and Mercy Petitions

In *State of Maharashtra v. Pradeep Yashwant Kokade & Anr.* (Crl.A. No. 2831-2832/2023), the Supreme Court issued comprehensive procedural guidelines to expedite the execution of death sentences and handling of mercy petitions.

The Court directed all states and union territories to establish dedicated cells within their Home or Prison Departments for prompt processing of mercy petitions within specified timeframes. These cells must ensure efficient coordination with prison authorities, law enforcement, and the offices of the Governor and President. The use of electronic communication was emphasized to minimize delays, except in cases requiring confidentiality.

For judiciary processes, the Court mandated that Sessions Courts immediately issue notices upon receiving High Court confirmation of a death sentence, regularly monitor pending appeals, and ensure timely issuance of execution warrants. A clear 15-day gap between warrant issuance and execution was prescribed to allow convicts to exercise their legal rights, including seeking legal aid.

Dismissing Maharashtra's appeal against the Bombay High Court's commutation of death sentences, the Court underscored that procedural lapses must not delay justice. Compliance reports are to be submitted

within three months, with the Court reviewing progress on March 17, 2025. These measures aim to prevent delays while safeguarding procedural fairness in death penalty cases.

4. Government Succession vs. State Succession in International Law

Government Succession and **State Succession** are distinct concepts in international law, addressing different legal scenarios involving continuity and change in sovereignty .

The recent change of government in Bangladesh exemplifies **government succession**, maintaining the country's sovereignty and international legal obligations. Unlike **state succession**, which involves fundamental changes in sovereignty, government succession ensures stability and continuity within the framework of international law, highlighting the resilience of legal norms amidst political transitions.

1. Government Succession: Government succession occurs when a state's internal governing authority changes without affecting the state's sovereignty or international legal personality. It is regulated by customary international law rather than specific conventions.

Legal Principles and Framework:

- **Continuity of the State:** Under international law, a change in government does not affect the state's identity. The Montevideo Convention on the Rights and Duties of States (1933) affirms that a state's sovereignty and international personality are not contingent on its form of government.
- **Obligations and Treaties:** The Vienna Convention on the Law of Treaties (1969) prescribes that a change in government does not absolve a state of its treaty obligations. Article 26 (pacta sunt servanda) enforces the continuity of treaties.
- **Recognition:** Recognition of new governments, while not governed strictly by law, often hinges on political considerations. However, non-recognition does not terminate the state's legal obligations.

2. State Succession: State succession occurs when sovereignty over a territory changes, leading to the emergence of new states or the reconfiguration of existing ones. It is governed by international conventions and customary practices.

Legal Principles and Conventions:

- **Vienna Convention on Succession of States in Respect of Treaties (1978):** Article 34 outlines the transfer of treaty obligations in cases of state succession. Article 16 permits successor states to renegotiate certain treaties unless the nature of the treaty dictates automatic continuity.
- **Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts (1978):** Regulates the distribution of state assets, debts, and archives among successor states.
- **Stimson Doctrine (1932):** International law does not recognize territorial changes achieved through coercion or aggression, ensuring lawful state succession.

5. Intention Irrelevant if Injury Likely to Cause Death: SC Clarifies Section 300 IPC

In *Kunhimammed @ Kunheethu v. State of Kerala*, the Supreme Court upheld the conviction of an accused for murder under Section 300 IPC, rejecting the argument that the absence of premeditation negates liability for culpable homicide amounting to murder.

The bench of Justice Vikram Nath and Justice Prasanna B Varale emphasized that under Clause (3) of Section 300 IPC, the lack of intention to commit murder is irrelevant if the bodily injury caused by the accused is sufficient to cause death in the ordinary course of nature.

The Court referred to the precedent in *Virsa Singh v. State of Pepsu (1958)*, establishing that once the prosecution proves the presence of a specific bodily injury, its nature, the intent to cause it, and its sufficiency to cause death, the offence qualifies as murder. The deliberate infliction of injuries on vital organs (lungs and heart) with a lethal weapon left no room for doubt about the accused's liability.

Rejecting the appellant's plea of spontaneity, the Court observed that the use of a lethal weapon and the deliberate targeting of vital parts outweighed claims of lack of premeditation. The appeal was dismissed, reaffirming that intent can be inferred from the severity and nature of injuries inflicted.

Weekly Focus

Case of the week: *Harla v. State of Rajasthan (1951)*

In *Harla v. State of Rajasthan (1951)*, the Supreme Court of India addressed the validity of the Jaipur Opium Act, 1923, which was enacted by a Council of Ministers during the minority of the Maharaja of Jaipur. The Act was neither promulgated nor published in any official gazette or public forum. The appellant, Harla, was convicted under this Act and challenged its validity on the grounds of lack of publication.

Legal Issue: Whether a law that has not been promulgated or published can be considered enforceable against individuals who had no means of knowing its existence.

Supreme Court's Ruling: The Court held that for a law to be enforceable, it must be made known to the public through proper promulgation or publication. Justice Vivian Bose, delivering the judgment, emphasized that:

- **Natural Justice:** It is against the principles of natural justice to penalize individuals under laws they are unaware of and could not reasonably be expected to know.
- **Necessity of Publication:** A law must be broadcast in a recognizable way so that all individuals can be aware of it. In the absence of any special law or custom, promulgation or publication is essential for a law to become operative.

The Court concluded that the mere passing of a resolution by the Council without further publication was insufficient to make the law operative. Consequently, the Jaipur Opium Act, 1923, was deemed invalid due to the lack of promulgation or publication.

PYQ Solution

What do you understand by an unlawful assembly? Discuss the circumstances when a lawful assembly becomes unlawful. Support your answer with suitable illustrations.(20 Marks, 2022)

An **unlawful assembly** is defined under Section 141 of the Indian Penal Code (IPC) as an assembly of five or more persons with a common object that falls into one of the following categories:

1. **To overawe by criminal force** the Central or any State Government, or any public servant in the exercise of lawful power.
2. **To resist the execution of any law** or legal process.
3. **To commit any mischief, criminal trespass, or other offense.**
4. **By means of criminal force**, to dispossess any person of property or deprive them of the enjoyment of a right.
5. **By means of criminal force**, to compel any person to do what they are not legally bound to do, or to omit what they are legally entitled to do.

A **lawful assembly** can become unlawful if its common object changes to any of the aforementioned purposes. This transformation can occur spontaneously, without prior planning.

Illustrations:

- **Spontaneous Escalation:** A group gathers peacefully to protest. During the event, some members decide to block a public road forcibly, intending to disrupt traffic and compel authorities to meet their demands. The assembly, initially lawful, becomes unlawful as it now aims to commit an offense (criminal trespass) and uses criminal force to compel action.
- **Change in Intent:** A community meeting is convened to discuss local issues. Midway, attendees collectively decide to forcibly occupy a government building to demand action. The assembly's purpose shifts to resisting the execution of law and using criminal force, rendering it unlawful.
- **Unplanned Violence:** Fans gather outside a stadium to celebrate a victory. The crowd becomes agitated and starts vandalizing nearby property. The assembly, though lawful at inception, turns unlawful as it engages in mischief and criminal trespass.

In the case of **Moti Das v. State of Bihar**, the assembly was lawful at its inception but became unlawful when a member incited others to assault a victim, leading to pursuit and potential harm. This case illustrates how an assembly's nature can change based on the actions and intentions of its members.

Common object: It's important to note that every member of an unlawful assembly can be held liable for offenses committed by the group, even if not all members actively participate in the unlawful acts. The essence lies in the **common object** of the assembly, and mere presence with awareness of this common object can attract liability.

Gangadhar Behera and Others v. State of Orissa (2002): The Supreme Court emphasized that mere physical presence within an unlawful assembly, without active participation or shared criminal intent, is insufficient to establish guilt. The common purpose is inferred from the actions and language of all the members involved.