

## **Weekly Update for Law optional**

### **UPSC A mix of Conceptual, Current/Contemporary Topics**

Date: 2nd - 8th October 2023

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## **1. Arbitration Quandary**

### **Delhi High Court's Decision in Amit Guglani vs. L&T Housing Finance**

#### **Background:**

The core of the dispute emanates from a tripartite agreement and a separate home loan agreement, with each containing distinct arbitration clauses and jurisdictions. When disputes arose following a revision of the basic prime lending rate (BPLR) and subsequent classification of the loan as a non-performing asset, the petitioners invoked arbitration, leading to questions on jurisdiction and the appropriate arbitration clause to apply.

#### **Legal Tussles:**

The respondents challenged the maintainability of the petition on several grounds, notably territorial jurisdiction and the absence of a mandatory notice of invocation under Section 21 of the A&C Act. The central issue for the court to resolve was the relationship between the two agreements and their respective arbitration clauses.

#### **The Ruling:**

The court affirmed the interconnected nature of the tripartite and loan agreements, concluding that disputes arising should be resolved under the primary, umbrella agreement. However, it simultaneously upheld the necessity of a mandatory notice under Section 21 of the A&C Act for initiating arbitration proceedings, thus refusing to exercise jurisdiction under Section 11(6) of the A&C Act in the absence of such notice.

#### **Implications:**

This ruling underscores the paramount importance of procedural compliance in arbitration, even in cases where multiple interconnected agreements with different arbitration clauses exist. It

emphasises the necessity for parties to strictly adhere to agreed-upon procedures to avoid jeopardising their positions in potential legal disputes.

## 2. Cancelled Flights and Withheld Refunds

The Chandigarh District Consumer Disputes Redressal Commission's recent judgement against Yatra Online Private Limited and British Airways spotlighted the pivotal issue of consumer rights in the event of unannounced flight cancellations.

### Background:

Dr. G.S. Arora and family, having booked a journey from Geneva to Delhi via London, were stranded due to an unannounced cancellation. With Yatra Online and British Airways failing to offer alternative arrangements or refunds, the aggrieved parties sought legal redress, citing deficiency in service and unfair trade practices.

### The Arguments:

Yatra Online pleaded its role as an intermediary, disassociating from operational controls of airlines. British Airways, admitting to the cancellation, claimed notification and refund processing on their part but pointed fingers at Yatra and the complainants for failure in confirming alternative bookings.

### The Verdict:

The Commission, unmoved by the defences, emphasised the lack of assistance and withheld refunds. Yatra Online's concealment of the refunded amount and British Airways' service deficiency culminated in a ruling favouring Dr. Arora, with both companies held liable for compensations.

### Implications:

This verdict underscores consumers' protected rights amidst service failures. It sends a potent message to service providers about accountability, transparent communication, and prompt remedial actions to mitigate customer inconveniences and uphold consumer rights.

## 3. Interplay of DPDP and Competition Acts

The enactment of the Digital Personal Data Protection Act, 2023 (DPDP Act) has sparked an intriguing debate around its relationship with the Competition Act, 2002. While some foresee conflicts, a closer scrutiny reveals a harmonious coexistence, instrumental in shaping a balanced digital ecosystem.

Though the DPDP Act and the Competition Act serve distinct objectives – personal data protection and market competition preservation respectively – their intersection fosters an environment where consumer privacy and competitive markets coexist and mutually reinforce each other.

### Enhanced Market Competitiveness:

Critics argue the DPDP Act's stringent compliance requirements pose barriers to market entry. However, bolstered privacy protections enhance user trust, fostering a competitive digital

landscape. For startups, the DPDP Act's potential compliance relaxations promise innovation and competition stimulation.

#### **Level Playing Field through Consent Mechanisms:**

The DPDP Act's consent-centric approach aligns with efforts to curb anti-competitive practices by Big Tech. By ensuring data processing transparency and consent, the Act indirectly mitigates data-driven anti-competitive behaviours, resonating with the Competition Act's objectives.

#### **Empowering Consumers:**

Introduction of "Consent Managers" by the DPDP Act offers users unprecedented control over their data, balancing power dynamics between consumers and corporations. This shift not only augments user privacy but also infuses fairness into the digital marketplace.

## **4. Supreme Court's Assertiveness in Crimes Against Women**

In a recent notable judgement, *Balvir Singh v. State of Uttarakhand*, the Supreme Court emphasised the imperativeness of judicial sensitivity in cases involving crimes against women, steering the focus away from procedural technicalities to substantive justice. The conviction of a husband for the murder and domestic cruelty of his wife was upheld, marking a stern stand against leniency anchored in legal formalities.

#### **The Case:**

Balvir Singh's appeal against his conviction under section 302 and 498-A IPC met with a firm response from the Supreme Court bench of Justices J.B. Pardiwala and Prashant Mishra. The case highlighted Sudha's tragic ordeal, marred by harassment, dowry demands, and a mysterious death marked by a chilling silence from the husband about the tragedy.

#### **The Ruling:**

Justice Pardiwala, expressing the court's standpoint, accentuated the need for realistic and sensitive legal approaches in such cases. The spectre of procedural technicalities and insignificant evidence lapses should not eclipse the overarching pursuit of justice. Echoing this sentiment, the judgement referenced *Dharam Das Wadhvani v. State of Uttar Pradesh*, affirming that the benefit of reasonable doubt should not dilute the court's resolve in holding criminals accountable.

#### **The Evidence:**

The prosecution painted a bleak picture of Sudha's married life and untimely demise, buttressed by letters detailing her plight. Amidst suspicious conduct from the appellant and the ominous circumstances of Sudha's death, the court found the prosecution's case compelling enough to invoke Section 106 of the Evidence Act.

#### **Implications:**

The Supreme Court's decision resonates as a clarion call for enhanced judicial sensitiveness in addressing crimes against women. It's a stark reminder that the sanctity of justice should not be compromised by procedural intricacies, reaffirming the judiciary's role as the staunch custodian of justice, especially for the vulnerable.

## 5. Verdict Amidst Cloudy Terms: Ensuring Fair Play in Insurance Claims

The Supreme Court verdict in *Mehta Jewellers v. National Insurance Company Ltd.* has spotlighted the crucial issue of ambiguous terms in insurance policies, a grey area that often leads to disputes between insurers and policyholders. The Court, in this case, underscored the imperative of clarity, ensuring that ambiguous terms don't become a tool to deny rightful claims.

### Background of the Case:

Mehta Jewelers, the appellant, found themselves in a legal tussle with National Insurance Company Limited after their claim, owing to a burglary that resulted in the loss of several gold ornaments, was denied. The insurance company cited the non-compliance of a policy term requiring valuables to be kept in a "locked safe of standard make," a term neither defined nor clarified in the policy.

### Journey Through the Courts:

The State Consumer Disputes Redressal Commission initially ruled in favour of Mehta Jewelers, a verdict that was overturned by the National Consumer Disputes Redressal Commission. The National Commission anchored its decision on the interpretation of the term "safe," concluding that a standard steel almirah didn't meet the criteria.

### The Supreme Court's Stand:

The Division Bench of Justices Hima Kohli and P.S. Narasimha dove into the core issue - the ambiguity of the term "locked safe of standard make." In the absence of clear definitions and given the undefined nature of these terms in the policy, the Court found it unjust to deny the appellant's claim.

### Key Takeaways:

The verdict stands as a reminder of the necessity for clear, unambiguous terms in insurance policies. It underscores the principle that ambiguities, especially those potentially impacting the claim's validity, should not be constructed in a manner unfavourable to the policyholder.

## 6. Case of the Week

### *Mukesh v. NCT of Delhi*

The case of *Mukesh v. NCT of Delhi* is a significant judgement in the context of Indian criminal law. The case is often referred to as the "Nirbhaya case," which attracted nationwide and global attention. The case dealt with gang rape and murder committed in Delhi on December 16, 2012. The case led to a plethora of legal and social discussions on gender-based violence and women's safety, leading to the amendment of the Indian Penal Code and the Code of Criminal Procedure.

### Facts of the Case

On the night of December 16, 2012, a 23-year-old paramedic student was gang-raped and severely assaulted in a moving bus by six men, including the driver. The victim and her male friend were thrown out of the bus after the brutal attack. The victim succumbed to her injuries 13 days

later. The incident sparked a national and international outcry, demanding strict action against the perpetrators and reformation of Indian rape laws.

### Legal Issues Involved

- **Constitutionality of Death Penalty for Rape and Murder:** Whether the death penalty in this case would be 'rarest of the rare' and thus constitutional.
- **Fair Trial:** Whether the accused were provided with a fair trial, given the immense public and media scrutiny.
- **Evidentiary Matters:** What is the role of forensic evidence, including DNA testing, in substantiating the prosecution's case?

### Arguments Presented

#### Prosecution

- **Grave Nature of the Offense:** The prosecution argued that the offense was not just a case of rape but a brutal and heinous crime that resulted in the death of the victim. The acts constituted offences under multiple sections including IPC Sections 302, 307, 376, and others.
- **Forensic Evidence:** The prosecution presented strong forensic evidence, including DNA tests that matched the accused.
- **Eyewitness Testimony:** The male friend who survived the attack was a key eyewitness to the incident.

#### Defense

- **Media Trial:** The defence argued that the media trial made it impossible for the accused to get a fair trial.
- **Questioning the Evidence:** The defence tried to establish loopholes in the forensic evidence and eyewitness accounts.

### Court's Judgement

The Supreme Court upheld the death penalty of the accused, ruling that the case fell under the 'rarest of the rare' category, thereby meriting capital punishment. It held that the act was grotesque and the sheer brutality exhibited was unparalleled. The Court rejected the argument that the accused could not receive a fair trial due to media scrutiny.

## 7. Repeated PYQ

**Q. "Pluralism is the keystone of Indian culture and religious tolerance is the bedrock of Indian Secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection of God-realisation. Thus, all persons are equally entitled to freedom of religion which is not absolute." Critically examine the above statement with the help of constitutional provisions and relevant case laws.'**

The statement encapsulates the idealised form of Indian secularism that hinges on the principles of pluralism and religious tolerance. The Indian concept of secularism is deeply embedded in its

cultural ethos, which views all religions as equally valid routes to God. It underscores the entitlement of every individual to religious freedom, albeit with qualifications.

## Constitutional Provisions

### Fundamental Rights

- **Article 25:** Guarantees the freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, and health.
- **Article 26:** Allows every religious denomination the right to manage its affairs and maintain institutions for religious and charitable purposes.
- **Article 27:** Prohibits the State from levying a tax that proceeds exclusively for the promotion or maintenance of any particular religion.
- **Article 28:** Deals with the right to freedom as to attendance at religious instruction in educational institutions.

### Directive Principles and Preamble

- **Article 44:** Promotes a Uniform Civil Code for citizens throughout the territory of India.
- **Preamble:** The term 'Secular' was added by the 42nd Amendment, affirming the state's neutral stance towards all religions.

### S.R. Bommai v. Union of India (1994)

The Supreme Court held that secularism is an essential feature of the Constitution. The case also clarified that a State Government indulging in anti-secular actions could be dismissed under Article 356.

### Ismail Faruqui v. Union of India (1994)

This case tackled the acquisition of religious places by the state. The Court held that a mosque is not essential to the practice of Islam, thereby allowing the state to acquire it for public interest.

### Shah Bano Case (1985)

Though primarily a case concerning alimony, it highlighted the tension between religious practices and secular civil laws. The legislative reversal of the verdict in favour of Islamic law provoked discussions about India's secular fabric.

### Pluralism and Religious Tolerance

The Indian brand of secularism does not mean irreligiosity but respects all religions equally. However, this equal respect has led to debates, particularly concerning personal laws, that challenge the uniformity of legal provisions. As seen in Shah Bano's case, the Indian state's deference to religious laws can sometimes compromise universal principles of justice.

### Freedom of Religion: Not Absolute

While Article 25 provides religious freedoms, they are not absolute and are subject to restrictions such as public order and health. In this light, the statement's claim that "all persons are equally entitled to freedom of religion which is not absolute" is constitutionally valid.

### Efficacy of Indian Secularism

In cases like S.R. Bommai, the judiciary acted as a gatekeeper of secularism, but the actual practice varies. Communal tensions and religious conflicts sometimes expose the inadequacy of India's secular governance. Therefore, while the statement reflects the constitutional ideal, the efficacy of its practical application can be questioned.