

Weekly Update for Law optional
UPSC A mix of Conceptual, Current/Contemporary Topics
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1. Supreme Court to Reevaluate 1998 Verdict on Lawmakers' Immunity

Relevant Topic: Parliamentary Immunity Review

Background: The 1998 Judgement

In 1998, a five-judge constitution bench ruled in the PV Narasimha Rao v. CBI case that parliamentarians are protected under the Constitution from criminal prosecution for any speeches made and votes cast within the House. This immunity is based on Article 105(2) for MPs and Article 194(2) for MLAs, which explicitly state that members of the legislature cannot be held liable for their actions within the legislative body.

The 2019 Appeal and Reconsideration

The reconsideration of this verdict stems from a 2019 appeal filed by Sita Soren, a JMM MLA and the daughter-in-law of party chief Shibu Soren. Sita Soren was accused of accepting a bribe to vote for a particular candidate in the Rajya Sabha election in 2012. She argued that the constitutional provision providing lawmakers with immunity from prosecution should apply to her case.

A three-judge bench, headed by then Chief Justice of India Ranjan Gogoi, decided to revisit the verdict in the JMM bribery case. This case involved Shibu Soren, a former Jharkhand Chief Minister and ex-Union Minister, along with four other JMM MPs who had accepted bribes to vote

against a no-confidence motion against the PV Narasimha Rao government in 1993. This government, which was in a minority, survived the no-confidence vote with their support.

Current Developments: In the recent ruling, a five-judge constitution bench, led by Chief Justice DY Chandrachud, announced its decision to set up a seven-judge bench to thoroughly reexamine the matter. This decision comes despite opposition from the Attorney General, R Venkataramani, who argued against reconsidering the 1998 judgement.

The bench emphasised that the purpose of Article 105 is to ensure that members of Parliament and state legislatures can perform their duties without fear of legal consequences for their speeches and votes. However, it clarified that this immunity does not elevate lawmakers to a position where they possess higher privileges compared to the general public.

Several senior advocates and experts have supported the idea of revisiting the judgement, citing a "fractured" consensus in the PV Narasimha Rao case. They argue that a larger bench is needed to resolve the conflicting viewpoints on this issue.

2. UN Food Systems Summit

Relevant Topic : International Environmental Law, Sustainable Development Goals (SDGs), Basel Convention

In a high-level event held on the sidelines of the UN General Assembly, the Director-General of the Food and Agriculture Organization of the United Nations (FAO), QU Dongyu, called for increased political commitment and global solidarity in the pursuit of agrifood systems transformation and the attainment of the Sustainable Development Goals (SDGs).

Despite facing numerous challenges, Director-General Qu emphasised the existence of significant opportunities and the necessity of a comprehensive approach that ensures no one is left behind. He noted the ongoing repercussions of COVID-19, economic disruptions, conflicts, climate change, and the alarming increase in hunger, with 122 million more people pushed into hunger since the onset of the pandemic.

Recognizing the intricacies of agrifood systems, environmental concerns, and biodiversity, Qu urged collaboration aimed at reshaping the current economic development model to make it more sustainable while fostering scientific innovation. He stressed the importance of sharing experiences, mutual learning, building consensus, adopting an inclusive approach across all sectors, and integrating traditional, indigenous knowledge with new technology. This aligns with international environmental law principles that emphasise the need to protect and conserve biodiversity and natural ecosystems. International agreements like the Convention on Biological Diversity (CBD) play a crucial role in this context.

Mariam Almeiri, Minister of Climate Change and Environment of the United Arab Emirates, stressed the importance of political will in addressing food system transformation and climate change, especially in the lead-up to COP28. She emphasised the role of diverse stakeholders, including national leadership, non-state actors, and innovation. This is consistent with international efforts under the United Nations Framework Convention on Climate Change (UNFCCC) and its various agreements, including the Paris Agreement. These agreements aim to mitigate greenhouse gas emissions and adapt to the impacts of climate change.

The event underscores the importance of collaboration among diverse stakeholders and the need for political will in addressing food system transformation and climate change. International environmental law often involves collaborative efforts among nations and stakeholders to develop and implement policies, regulations, and agreements. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, for example, addresses the global management of hazardous waste and promotes cooperation among countries to ensure environmentally sound waste management.

3. Parliament Approves Women Reservation Bill

Relevant Topic : Gender Equality and Representation, Constitutional Amendments

In a groundbreaking development, the Rajya Sabha unanimously passed the Constitution (One Hundred and Twenty-eighth Amendment) Bill 2023, which proposes reserving one-third of seats for women in the Lok Sabha, state legislatures, and the Delhi legislative assembly. This landmark move signifies a significant stride towards enhancing women's representation in the political landscape of India.

The bill, introduced by Union Law Minister Arjun Ram Meghwal, received resounding support in both houses of Parliament. In the Lok Sabha, it passed with the backing of a two-thirds majority of the members present and voting, with 454 Members in favour and only 2 opposing it. Subsequently, on the fourth day of a special Parliament session, the Rajya Sabha gave its unanimous approval, with all 214 members present casting their votes in favour.

Despite concerns, the passage of this bill represents a momentous milestone in Indian politics. It addresses a longstanding gender disparity in political representation and fulfils a commitment that has been on the agenda for over a decade.

The 2023 bill introduces crucial amendments to the Indian Constitution, with a particular focus on Article 239AA (Special provisions with respect to Delhi) and the insertion of three new articles, namely Articles 330A, 332A, and 334A. These newly proposed articles seek to ensure 33 percent reservation for women in the Lok Sabha and the state legislative assemblies. It's worth noting that, unlike the previous bill, the enforcement of the 2023 amendment is contingent upon the completion of a delimitation exercise following the first census conducted after the bill's enactment.

4. Dispute Resolution through Mediation

Relevant Topic : Alternative Dispute Resolution (ADR), Mediation

The Ministry of Law and Justice has officially notified the Mediation Act 2023, marking a significant step towards promoting alternative dispute resolution (ADR) in India. The Act aims to facilitate institutional mediation for dispute resolution, enforce mediated settlement agreements, establish a body for the registration of mediators, encourage community mediation, and embrace online mediation as an accessible and cost-effective process.

Key Highlights of the Mediation Act 2023:

- **Objective:** The primary goal is to promote ADR, particularly institutional mediation, and provide a comprehensive mediation law. The Act also seeks to offer online mediation as an effective alternative dispute resolution mechanism.

- **Applicability:** The Act applies when mediation is conducted in India, when both parties have a connection to India (residence, incorporation, or place of business), when a mediation agreement specifies its use, in international mediation, and when a dispute involves the Central Government, State Government, public bodies, corporations, local bodies, or entities controlled or owned by such governments (especially in commercial disputes).
- **Mediation Agreement/Clause:** Mediation agreements must be in writing and can take the form of a mediation clause within a larger agreement. Parties are encouraged to attempt pre-litigation mediation voluntarily and with mutual consent.
- **Exclusions:** Certain disputes listed in the First Schedule of the Act are not eligible for mediation. In case of no settlement, a non-settlement report is sent to the referring Tribunal for adjudication.
- **Mediators:** Mediators can be of any nationality and are chosen by the parties. The mediator must disclose conflicts of interest during the process and cannot act as an arbitrator or represent a party in subsequent proceedings related to the same dispute.
- **Time Limit:** Mediation should be completed within 120 days from the first appearance before the mediator, with a maximum extension of 60 days.
- **Termination:** Mediation can end through the signing of a mediated settlement agreement, a written declaration by the mediator, a party's request to opt-out, or upon expiration of the time limit.
- **Challenging Settlement Agreements:** Settlement agreements can be challenged on grounds of fraud, corruption, impersonation, or if the dispute was not suitable for mediation.

5. Seller Liable for Damaged TV Delivery

Relevant Topic Covered: Consumer Protection, E-Commerce, Marketplace Liability

Case: *Sri Shiv Nair vs. Amazon Development Centre and Others*

Key Points of the Case:

- **Background:** The complainant, Sri Shiv Nair, ordered a Panasonic HD Smart LED TV from Cloudfail India Pvt. Ltd. on Amazon's website. The TV, manufactured by M/s Panasonic India (P) Ltd., had a price of Rs. 59,000. Due to construction-related issues at his place, the complainant was only able to unpack the TV after the 10-day return period. Upon unpacking, he discovered that the TV was severely damaged and no longer in its original packaging. The Panasonic engineer refused to install the TV due to the extent of the damage. Despite multiple follow-ups with the seller, no resolution was provided. Subsequently, the complainant filed a consumer complaint against Amazon, the manufacturer, and the seller.
- **Amazon's Position:** Amazon argued that it neither sold the TV nor offered to sell any products. It operated solely as a third-party online marketplace and did not participate in the sale transaction between the seller and the complainant.
- **Seller's Defence:** The seller contended that the complainant was not entitled to return the TV as it was unpacked almost 20 days after the sale receipt, whereas the return window was only 10 days according to the sale agreement.

- **Observations by the Commission:** The commission, relying on a letter from the Panasonic Service Provider, determined that the TV was indeed damaged at the time of delivery. Furthermore, the damage could not be attributed to the manufacturer, as gross negligence was evident during the handling and transportation of the TV. Therefore, the seller was found responsible for a service deficiency in delivering the TV safely. The commission ruled that the seller, as the TV's vendor, bore the responsibility of safely delivering the TV to the complainant's door.
- **Resolution:** Since the TV was purchased in 2016, the commission deemed a replacement with the same model inappropriate. Instead, the seller was instructed to refund Rs. 58,990 to the complainant with 9% interest from the date of the legal notice sent to the seller. Additionally, the seller was ordered to pay Rs. 10,000 as compensation for the mental distress caused to the complainant, along with Rs. 10,000 for litigation costs.

6. Case of the Week

Booz Allen & Hamilton Inc. vs. SBI Home Finance Limited & Others (2011)

The Supreme Court of India, in this landmark judgement, laid down the parameters concerning the arbitrability of disputes in India. The decision in Booz Allen & Hamilton Inc. vs. SBI Home Finance Limited & Others dealt primarily with the question of which matters are suitable for adjudication by arbitration and which matters lie exclusively within the domain of public fora, such as courts.

Issue Before the Court

The pivotal issue before the Supreme Court was to determine whether the subject matter of the dispute between Booz Allen and SBI Home (i.e., enforcement of a mortgage by a sale) was arbitrable.

Right In Rem vs. Right In Personam

The Supreme Court categorised rights as 'rights in rem' and 'rights in personam'. While rights in rem are rights exercisable against the world at large, rights in personam are rights against specific individuals.

The court noted that historically, disputes relating to rights in personam are considered amenable to arbitration, whereas disputes relating to rights in rem are to be adjudicated by courts and public tribunals.

Arbitrability of Substantive Rights

The court went on to distinguish between two aspects of non-arbitrability: (i) matters that are not capable of adjudication through arbitration, and (ii) matters that are not permitted to be adjudicated through arbitration due to their exclusive reservation by law to be settled by public fora.

Test for Determining Arbitrability

The court outlined a 'test of arbitrability' and concluded that for a dispute to be non-arbitrable, it must relate to actions in rem, which do not pertain merely to individual rights.

Applying these principles to the case at hand, the court observed that foreclosure, sale, and redemption of mortgaged properties are matters of public nature. Such actions pertain to rights in rem and, thus, cannot be subjected to private arbitration.

7. Repeated PYQ

The provision of Section 149 of the Indian Penal Code relates to the question of offence, while Section 34 is a question of evidence. Give reasons for the statement.

Indian Penal Code (IPC), 1860, among its various provisions, Section 149 and Section 34 play significant roles in attributing criminal liability to individuals who act in concert. At first glance, both sections might appear to address the shared intent and action of individuals, but they serve very distinct purposes within the IPC.

Conceptual Foundation:

- **Section 149 IPC:** This section concerns itself with the offence of "every member of an unlawful assembly guilty of the offence committed in prosecution of the common object". The provision essentially states that if an offence is committed by any member of an unlawful assembly in pursuance of the common object of that assembly or such as the members of that assembly knew was likely to be committed in prosecution of that object, every person who was a member of that assembly at the time the offence was committed, would be guilty of that offence.
- **Section 34 IPC:** Titled "Acts done by several persons in furtherance of common intention", this section implies that when a criminal act is done by several individuals in furtherance of the common intention of all, each person is liable for that act in the same manner as if it was done by him alone.

Nature and Application:

Section 149 IPC:

- **Offensive in Nature:** Section 149 creates a specific offence and renders every member of the unlawful assembly liable for the criminal act done in furtherance of the common object.
- **Existence of Unlawful Assembly:** It requires the presence of five or more persons forming an unlawful assembly with a common object.

Section 34 IPC:

- **Evidentiary in Nature:** Section 34 doesn't create a specific offence but merely lays down the principle of joint liability in the doing of a criminal act.
- **No Specific Number Requirement:** It can apply to two or more individuals. There's no requirement for a specific number as in Section 149.

Intention vs. Common Object

Section 149 IPC:

- **Common Object is Key:** The essence of this section is the common object and not the common intention. Though related, both are different. Common objects don't require a prior concert or meeting of minds before the attack.
- In **Ramashish Yadav vs. State of Bihar**, the Supreme Court held that there must be a connection between the common object of the assembly and the crime committed by a member of such assembly.

Section 34 IPC:

- **Common Intention is Crucial:** This section demands a pre-arranged plan and a prior meeting of minds. It emphasises the element of participation in action.
- In **Barendra Kumar Ghosh vs. King Emperor**, the Privy Council held that Section 34 is applicable when the accused actively cooperates and acts in concert.

While both Section 149 and Section 34 of the IPC deal with joint liability, they differ significantly in their application and requirements. Section 149 is about the liability of every member of an unlawful assembly concerning a crime committed in the pursuit of a common object, making it inherently offensive. On the other hand, Section 34 is rooted in the principle of common intention and acts as a rule of evidence. Proper understanding and application of these sections are paramount for the fair administration of justice.

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