

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 3rd Dec- 10th Dec 2023

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1. Availability Of Funds In Other Bank Accounts Not A Defence

The Supreme Court's decision in HARPAL SINGH vs. THE STATE OF HARYANA, regarding the proceedings under Section 138 of the Negotiable Instruments Act, 1881, provides a significant legal precedent and a clear interpretation of the law regarding dishonored cheques.

Legal Analysis:

1. Section 138 of the Negotiable Instruments Act, 1881:

- Section 138 deals with dishonor of cheque for insufficiency of funds.
- The essence of this provision is to penalize the defaulting party who issues a cheque without sufficient funds in the specific account.

2. Supreme Court's Interpretation:

- The Supreme Court categorically held that in a Section 138 proceeding, the defense of having sufficient funds in other bank accounts is not tenable.
- The focus is on the specific bank account from which the cheque was drawn.

3. Legal Reasoning:

- The rationale behind this interpretation is the principle of trust and reliability inherent in financial transactions involving cheques.
- By emphasizing the specific account, the Court intends to uphold the integrity of individual transactions and ensure accountability.

The Supreme Court's decision is a landmark ruling that clarifies the scope of Section 138 of the Negotiable Instruments Act. It underscores the importance of maintaining sufficient funds in the

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specific account from which a cheque is issued, thereby ensuring reliability in financial transactions. This case highlights the need for meticulous financial practices and the legal implications of failing to adhere to them.

2. New LLP rules framed in India

The Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023, introduced by the Ministry of Corporate Affairs (MCA) on November 9, 2023, and effective from November 10, 2023, under the Limited Liability Partnership Act, 2008 (LLP Act), represent a significant regulatory step in the realm of corporate governance in India. These rules primarily focus on the identification and declaration of Significant Beneficial Owners (SBOs) in Limited Liability Partnerships (LLPs) in India. The enactment of these rules aligns with global trends towards ensuring transparency in business ownership and control, particularly in the context of preventing money laundering and financial fraud.

Defining Beneficial Owner

An SBO is an individual who, directly or indirectly, holds more than 10% of either the contributions, voting rights, or rights to profits in an LLP. This includes those who have significant influence or control over the LLP.

Criteria for Direct and Indirect Holdings:

- Direct holdings are those where the individual's name is directly associated with the ownership or rights.
- Indirect holdings cover a variety of scenarios, such as when the LLP's partner is a body corporate, a Hindu Undivided Family (HUF), a partnership entity, a trust, or a pooled investment vehicle. Specific criteria are outlined to identify an SBO in these cases.

Exceptions:

The rules do not apply to LLPs whose contributions are held by government entities, other LLPs, specific regulated investment vehicles, or entities controlled by the government.

Significance of the Rules:

These rules are a vital step towards ensuring corporate transparency in India. By mandating LLPs to disclose significant beneficial ownership, the regulations aim to prevent financial irregularities and promote ethical business practices. This move aligns with international standards for corporate governance and reflects India's commitment to combating financial crimes.

3. Electronics Evidence under Newly proposed Bhartiye sakshya Bill.

The Bharatiya Sakshya Bill, 2023 (BSB), proposed to replace the Indian Evidence Act of 1872, introduces significant changes in the realm of electronic evidence admissibility in India's legal system which is governed by **Information technology Act, 2000**.

This legislative proposal seeks to accommodate the advancements in information technology by recognizing various forms of electronic records such as emails, text messages, and server logs under the definition of "Document."

However, the BSB has sparked debate due to its contradictory provisions, creating ambiguity and potential challenges in the judicial process.

Background and Judicial Evolution:

The interpretation of electronic evidence under the current Indian Evidence Act has evolved through various landmark cases. Initially, in the **State (NCT of Delhi) v. Navjot Sandhu case**, the Supreme Court allowed electronic evidence admissibility under Section 65(d), even without complying with Section 65B, of IT Act, which typically requires specific conditions for such evidence.

However, this stance was overturned in **Anvar P.V. v. P.K. Basheer**, where the Court mandated adherence to the procedures outlined in Section 65B for electronic evidence to be admissible. This position was further solidified in the Arjun Panditrao Khotkar case.

Contradictory Provisions in BSB:

The BSB, while broadening the scope of admissible electronic evidence, presents conflicting clauses:

- Clause 61: Mirroring the position in the Navjot Sandhu case, it states that electronic or digital records should not be denied admissibility on the grounds of their digital nature, equating them with traditional paper records.
- Clause 62: Reinforces Clause 61 by emphasizing that the contents of electronic records can be substantiated under general documentary evidence procedures.
- Clause 63: However, this clause introduces a twist by reinstating the same conditions as Section 65(2) of the Evidence Act, akin to the principles established in the Arjun Panditrao case. It contains a non-obstante clause that seemingly overrides Clauses 61 and 62.

Implications and Conclusion:

The BSB's provisions create a paradoxical situation. On one hand, Clauses 61 and 62 suggest a simplified approach for presenting electronic evidence, while Clause 63 reverts to a more stringent, condition-laden process. This dichotomy leaves the legal fraternity in a state of uncertainty regarding the production and admissibility of electronic evidence under the new BSB.

The resolution of this ambiguity rests with the legislators. They need to harmonize these conflicting clauses to provide clear guidance on the admissibility of electronic evidence. The legislative decision will determine whether the legal system will align with the stringent requirements of the Arjun Panditrao case or revert to the more lenient approach of the **Navjot Sandhu** precedent. This decision is crucial for the future of electronic evidence in Indian judicial proceedings.

4. Application of Section 499 IPC Exceptions in Pre-Summoning Stage

In the case of **M/S Iveco Magirus Brandschutztechnik Gmbh vs. Nirmal Kishore Bhartiya & Anr.**, the Supreme Court of India made a significant ruling regarding the application of the exceptions under Section 499 of the Indian Penal Code (IPC) in defamation cases. This ruling is particularly important in understanding the scope and limitations of a magistrate's powers in dismissing defamation complaints at the preliminary stage.

Background of the Case:

The case arose from a tender process conducted by the Airports Authority of India (AAI) for the supply of Airfield Crash Fire Tenders. The bid of Iveco Magirus Brandschutztechnik Gmbh (the Appellant) was rejected in favor of Rosenbauer International AG (the Complainant). Subsequently, allegations of favoritism and irregularities were made against the Complainant by the Appellant's local representative, Mr. M.C. Aggarwal, who sent letters to various authorities, including the Minister of Civil Aviation and the Chairman of AAI. The Complainant filed a defamation complaint against the Appellant, alleging that these letters were defamatory.

Issue Before the Supreme Court:

The central issue before the Supreme Court was whether a magistrate, when handling a private defamation complaint, is confined only to the allegations in the complaint, or whether he can also consider the exceptions to Section 499 of the IPC before summoning the accused.

Appellant's Contention:

The Appellant argued that the High Court had erred in not considering that the documents filed in civil cases are protected by an "absolute privilege" under the fourth exception to Section 499 of the IPC. The Appellant contended that there was a failure of justice as the trial court issued process against the Appellant without considering whether any of the exceptions to Section 499 of the IPC applied.

Supreme Court's Analysis:

The Supreme Court noted the established principle that it is generally for the Magistrate to consider the exceptions to Section 499 of the IPC at the trial. However, the Court recognized that there is no legal barrier preventing a magistrate from considering these exceptions even before summoning the accused. The Court observed that under Section 200 of the CrPC, a magistrate is required to examine the complaint, any witnesses, and accompanying documentary evidence to form a prima facie opinion. This opinion is not about the sufficiency of the materials for a conviction, but for proceeding further.

Holding:

The Supreme Court held that the magistrate is not precluded from applying judicial mind to other provisions of the law and ascertaining whether an offence is prima facie made out. The Court emphasized that if the complaint and supporting statements reveal a complete defense under any of the exceptions to Section 499 of the IPC, the magistrate can dismiss the complaint after due application of judicial mind. The Court clarified that such dismissal, supported by reasons, would not be an act of excess jurisdiction.

Conclusion:

This judgment underscores the importance of judicial discretion and the role of magistrates in assessing the merits of a defamation complaint at the preliminary stage. It clarifies that magistrates are empowered to consider the exceptions under Section 499 of the IPC even before summoning the accused, thereby providing a check against frivolous or unfounded defamation claims. This decision aligns with the principles of justice and fairness, ensuring that defamation laws are not misused to stifle legitimate expressions or grievances.

5. Personality rights of famous people protected in India

The concept of personality rights in India has recently undergone significant evolution, particularly highlighted in the Delhi High Court's decision in *Anil Kapoor vs Simply Life and Others CS (COMM) 652/2023*. This case sheds light on the legal nuances of personality rights, extending the scope to include protection of phrases associated with a celebrity's persona, such as Anil Kapoor's famous catchphrase 'Jhakaas.'

Personality rights, rooted in the right to privacy and the tort of passing off, protect against unauthorized commercial exploitation of a person's identity. In India, these rights have been consistently upheld, especially for celebrities.

The Case of Anil Kapoor vs Simply Life and Others:

In this landmark case, Anil Kapoor sought legal remedy against unauthorized use of his name, likeness, and the phrase 'Jhakaas.' The Court recognized that the phrase, while common in Marathi, had become synonymous with Kapoor due to his unique style of delivery and personality. This decision expanded the understanding of personality rights in India to include distinctive catchphrases.

Legal Issues

The primary legal issue revolves around the extension of personality rights to phrases. The question arises whether an actor, the screenplay writer, or the director should have rights over a movie dialogue. This case suggests a shift towards recognizing the actor's claim, considering their contribution in popularizing the phrase.

Additionally, the case explores the limits of free speech, parody, and satire in the context of personality rights. The Court balanced these considerations against the potential harm to the celebrity's image and the unauthorized commercial gain derived from such usage.

Comparative Cases

Comparative analysis with cases like **Titan Industries Limited vs. M/s Ramkumar Jewellers** and **Amitabh Bachchan vs. Rajat Nagi & Ors.** reveals a consistent approach in protecting celebrities from unauthorized endorsement imputations. However, these cases primarily dealt with direct likenesses or voices, unlike Anil Kapoor's case, which extends to a phrase.

The Court's decision in Digital Collectibles Pte. Ltd. and Others vs Galactus Funware further nuances this understanding, differentiating between mere likeness use and endorsement or association.

Potential Implications and Concerns:

The protection of the phrase 'Jhakaas' raises concerns about the extent of control a celebrity can exert over commonly used phrases. Granting exclusive rights over a phrase to an individual could set a precedent impacting creative freedom and cultural expression. The challenge lies in balancing the rights of the individual against broader societal interests.

Conclusion

The **Anil Kapoor vs Simply Life** case marks a pivotal moment in the interpretation of personality rights in India, particularly in the realm of intellectual property. While it underscores the importance of protecting an individual's persona from unauthorized commercial exploitation, it also opens up debates about the limits of such protection, especially regarding commonly used phrases. The evolving jurisprudence in this area reflects the dynamic interplay between individual rights and societal interests, necessitating a careful and balanced approach by the judiciary and lawmakers.

6. Case of the Week

The Berubari Union case, officially known as "Re: The Berubari Union and Exchange of Enclaves," is a landmark judgment of the Supreme Court of India. It holds a pivotal place in Indian constitutional law, particularly in the context of treaty-making powers and the process of constitutional amendment. This case, decided in 1960, delved into the legal complexities surrounding the transfer of territories and the scope of executive power under the Constitution of India.

Background:

The Berubari Union case emerged from the political and territorial aftermath of the Partition of India in 1947. The dispute was about the exchange of certain enclaves and the transfer of Berubari Union, a territory situated at the India-East Pakistan (now Bangladesh) border, as per the Indo-Pakistan Agreement of 1958. The Government of India proposed to implement this agreement without amending the Constitution, which led to controversy and eventually a Presidential reference to the Supreme Court under Article 143 of the Constitution for an advisory opinion.

Legal Issues:

The primary legal issue revolved around whether the implementation of the Indo-Pakistan Agreement related to the exchange of enclaves, including Berubari Union, required a constitutional amendment. It also involved interpreting the scope of Article 3 and Article 368 of the Constitution, concerning the legislative competence for altering the boundaries of states and the amendment procedure of the Constitution, respectively.

Supreme Court's Analysis and Decision

- 1. Scope of Article 3:** The Court held that Article 3, which deals with the formation of new states and alteration of areas, boundaries or names of existing states, does not cover the cession of Indian territory to a foreign country. Hence, the implementation of the agreement through a law under Article 3 would be insufficient and unconstitutional.
- 2. Treaty-Making Power of the Executive:** The Court acknowledged the executive power of the Union to enter into treaties and agreements with foreign countries. However, it emphasized that when such treaties affect the disposition of territories, they transcend the scope of ordinary executive power.
- 3. Necessity of Constitutional Amendment:** It was concluded that a constitutional amendment was required to give effect to the agreement involving the transfer of territory. This decision underscored the principle that the executive cannot, by treaty or otherwise, alter the territorial limits of the country or cede any part of the territory without constitutional authority.

Constitutional Amendment:

Following the Supreme Court's advisory opinion, the Constitution (Ninth Amendment) Act, 1960, was enacted to facilitate the implementation of the Indo-Pakistan Agreement and the necessary territorial adjustments.

7. Repeated PYQ

Q: - A treaty is void if it conflicts with an existing or new or emerging peremptory norm of international Law or 'jus cogens' at the time of its inclusion. Comment.

The statement aligns with the principles outlined in the Vienna Convention on the Law of Treaties (VCLT), particularly regarding the interaction between treaties and peremptory norms, or 'jus cogens'. According to international law, 'jus cogens' refers to certain fundamental, overriding principles of international law from which no derogation is permitted.

The relevant provisions of the VCLT that address this issue are:

- 1. Article 53 - Treaties Conflicting with a Peremptory Norm of General International Law (Jus Cogens):** This article states that a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. In other words, if the treaty's provisions contravene fundamental principles such as the prohibition of genocide, slavery, or torture, it cannot stand.
- 2. Article 64 - Emergence of a New Peremptory Norm of General International Law (Jus Cogens):** This article deals with the scenario where a new peremptory norm emerges after a treaty has been concluded. If a new jus cogens norm is established and it is in conflict with an existing treaty, the treaty becomes void and terminates from the point when the new norm emerges.

The concept of jus cogens is a critical one in international law, reflecting the recognition that certain universal values and principles are so fundamental that they take precedence over bilateral or multilateral treaty obligations. These norms represent the highest hierarchy of international law and

include principles that are universally accepted and recognized by the international community as norms from which no deviation is permitted.

Democratic Republic of the Congo v. Belgium (2002): In the "Arrest Warrant Case," the ICJ addressed the issue of universal jurisdiction, which is closely related to jus cogens norms. The court observed that certain international norms, such as those prohibiting crimes against humanity, are of a jus cogens character.

Germany v. Italy (2012): In this case, also known as the "Jurisdictional Immunities of the State" case, the ICJ ruled that Italy had violated Germany's state immunity by allowing civil claims based on violations of international humanitarian law committed by Germany during World War II. The court acknowledged the jus cogens status of the prohibition of war crimes but held that this did not override the principle of state immunity, a decision that generated extensive debate about the relationship between jus cogens norms and other principles of international law.

The VCLT's provisions on jus cogens ensure that international law can adapt to evolving moral and ethical standards, and that treaties, which are otherwise binding agreements between states, cannot be used to perpetuate or legitimize actions that fundamentally violate these essential principles of international law. This approach upholds the integrity and hierarchy of international legal norms, ensuring that the most fundamental principles are safeguarded regardless of specific treaty obligations.

