Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

15th Nov - 22nd Dec 2024

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1.Supreme Court: Arbitrators Can Clarify Awards Post-Functus Officio

In the case of North Delhi Municipal Corporation v. M/S S.A. Builders Ltd, the Supreme Court addressed whether an arbitral tribunal retains jurisdiction to issue clarifications on an award after becoming "functus officio." The bench comprising Justices Abhay S. Oka and Ujjal Bhuyan clarified that an arbitral tribunal, although functus officio after delivering an award, has limited jurisdiction to correct errors or clarify the award under Section 33 of the Arbitration and Conciliation Act, 1996.

Issue and Judgment

The dispute arose when the respondent sought clarification from the arbitral tribunal regarding post-award interest under Section 31(7)(1)(b) of the Act—specifically, whether it applies to the principal amount alone or includes pre-award interest. The tribunal clarified that post-award interest is calculated on the sum of both the principal and pre-award interest, in line with the decision in M/S Hyder Consulting (UK) Ltd. v. Governor of Orissa.

The petitioner argued that the tribunal lacked jurisdiction to issue clarifications after becoming functus officio. However, the Supreme Court rejected this contention, emphasizing that the tribunal's limited powers under Section 33 include issuing clarifications or correcting errors even after the 30-day period if the court allows

Supreme Court's Observations

Justice Bhuyan, writing the judgment, held that:

- The tribunal retains limited jurisdiction to issue clarifications or rectify errors under Section 33 even after becoming functus officio.
- The phrase "unless another period of time has been agreed upon" in Section 33(1) permits clarifications beyond the 30-day period if approved by the court.
- In this case, the court allowed the respondent to seek clarification, and the petitioner fully participated in the proceedings, precluding objections to the tribunal's jurisdiction.

2. Interim Compensation In Cheque Dishonour Cases Isn't Mandatory

In **Rakesh Ranjan Shrivastava v. State of Jharkhand & Anr**, the Supreme Court clarified that granting interim compensation under **Section 143A (1)** of the Negotiable Instruments Act, 1881, is discretionary, not mandatory. The Court emphasized that the word "may" in the provision cannot be interpreted as "shall," as doing so would compel payment in all cases under Section 138, undermining fairness and justice.

Legal Principles:

1. **Discretionary Power**: Courts must exercise discretion based on a prima facie evaluation of the case, including the merits of the complaint, the defense, and the accused's financial condition.
2. **Rebuttable Presumption**: The presumption of liability under Section 139 is insufficient for granting interim compensation, as it is rebuttable and relevant only at trial.
3. **Reasoned Decisions**: Courts must provide brief reasons for their decision to grant or deny interim compensation, considering factors like the nature of the transaction and the parties' relationship.

The Court set aside the trial court's order granting interim compensation without reasons and directed a fresh hearing, reinforcing that interim orders must balance fairness and protect the rights of both complainants and accused.

3. Scheduled Tribe Status Limited to State of Origin

In **Chandigarh Housing Board v. Tarsem Lal**, the Supreme Court held that an individual recognized as a Scheduled Tribe (ST) in one State cannot claim the same status in another State or Union Territory (UT) where the tribe is not notified as ST under a Presidential Order. The judgment, delivered by Justices BV Nagarathna and Augustine George Masih, emphasized the necessity of a Presidential notification under **Article 342** of the Constitution to confer Scheduled Tribe status in any State or UT.

1. **Presidential Notification Essential:** The Court held that Article 342 mandates a Presidential notification, in consultation with the Governor, to classify a community as a Scheduled Tribe for a specific State or UT. Without such notification, no benefits can be extended to individuals claiming ST status.

2. **ST Benefits Non-Transferable Across States**: The Court reiterated that ST status is not portable across State or UT boundaries. Migration to a region where the individual's tribe is not notified as ST does not entitle them to ST benefits.

3. **Violation of Article 342:** In the present case, the Chandigarh Housing Board's advertisement inviting applications for housing from SC/ST individuals was held to be erroneous, as there was no Presidential Order notifying STs in Chandigarh under Article 342.

Case Background:
The respondent, Tarsem Lal, originally recognized as ST in Rajasthan, applied for housing under the Chandigarh Housing Board's scheme, claiming his ST status. Despite residing in Chandigarh for 20 years, his application was denied on the grounds that his tribe was not recognized as ST in Chandigarh. The Civil Court and the High Court ruled in his favor, but the Supreme Court overturned these decisions.

Judgment and Observations: The Court noted that the Housing Board's invitation to STs in Chandigarh was contrary to Article 342 and prevalent legal principles. It emphasized that the absence of a Presidential notification disqualified the respondent's claim to ST benefits in Chandigarh. Furthermore, the respondent could not invoke estoppel against the Housing Board, as the advertisement itself was issued in contravention of constitutional requirements.

4. Voters' Right to Know is Not Absolute

In **Karikho Kri v. Nuney Tayang (C.A. No. 004615/2023)**, the Supreme Court held that election candidates are not obligated to disclose all moveable assets owned by them or their dependents, except those of substantial value or indicative of a luxurious lifestyle. The Bench comprising Justices Aniruddha Bose and Sanjay Kumar set aside the Gauhati High Court's decision nullifying Karikho Kri's 2019 election as an Independent MLA from Tezu, Arunachal Pradesh.

Limited Disclosure Obligation: Candidates must disclose high-value moveable assets that reflect their lifestyle or bear substantial relevance to their candidature. Ordinary items or assets of negligible value, such as everyday vehicles or household goods, need not be disclosed.

Voters' Right to Know Not Absolute: The Court ruled that the voters' right to information is not absolute. A candidate's right to privacy survives for matters irrelevant to the candidature. Non-disclosure of minor or irrelevant assets does not amount to a defect under the Representation of the People Act, 1951.

Substantial Assets Require Disclosure: High-value items, such as luxury watches or vehicles, must be disclosed as they indicate a candidate's lifestyle. However, there is no rigid rule; each case must be judged based on its facts.

Background of the Case:
The election petition filed by Congress candidate Nuney Tayang challenged Kri's election, alleging non-disclosure of three vehicles owned by Kri's wife and son and failure to disclose occupancy of a government-allotted MLA cottage. The Gauhati High Court declared Kri's election invalid, citing non-compliance with Sections 33 and 36(2)(b) of the Representation of the People Act.

The Supreme Court overturned the High Court's ruling, holding that:

- The undisclosed vehicles (a scooter, van, and motorcycle) were either sold or gifted before the nomination and did not constitute substantial assets requiring disclosure.

- Non-disclosure of these items did not amount to a corrupt practice under Section 123(2) of the Act.
- While Kri's use of a government-allotted MLA cottage was not disclosed, it did not affect the integrity of his nomination.

The Court emphasized the importance of balancing a candidate's privacy rights with the voters' right to information, ensuring that only material omissions impacting a candidate's suitability are considered defects. The decision sets a precedent for assessing the disclosure of assets in election nominations.

5. Development of custom in International Law

Customary international law is one of the primary sources of international law, alongside treaties and general principles of law. It represents unwritten legal norms derived from the consistent and general practice of states, accompanied by the belief that such practice is legally obligatory (*opinio juris*). The development of custom in international law involves an evolutionary process rooted in state behavior, judicial decisions, and scholarly writings.

Customary international law consists of two fundamental elements:

1. **State Practice:** A consistent and general practice of states, including diplomatic acts, military actions, or national legislation.
2. **Opinio Juris:** The psychological element where states engage in a practice because they believe it is required by law, not out of convenience or courtesy.

Stages in the Development of Custom

1. **Emergence of State Practice:** A practice must first develop among states. This can arise from repetitive actions in areas like navigation, diplomatic immunities, or human rights. The practice must be widespread, consistent, and uniform, though absolute uniformity is not required. Minor deviations by states do not necessarily invalidate a custom.

2. **Acceptance as Law (Opinio Juris):** The practice must be accompanied by a sense of legal obligation. States must believe that their actions are legally required, not merely based on convenience or policy considerations.

3. **Judicial Recognition and Codification:** Courts, such as the International Court of Justice (ICJ), play a crucial role in identifying and affirming customary international law. Codification efforts, such as those by the International Law Commission (ILC), often incorporate existing customs into treaties, further solidifying them as binding norms.

Weekly Focus

Case of the week: Commissioner of Wealth Tax, Bhopal v. Mulla Muhammad Ali

In *Commissioner of Wealth Tax, Bhopal v. Abdul Hussain Mulla Muhammad Ali* (1988) 3 SCC 562, the Supreme Court of India addressed whether a sum of ₹4,00,000, advanced by the assessee to his business partner, constituted an includible asset under the Wealth Tax Act, 1957. The assessee contended that the amount was a "Quaraza-e-Hasana," a loan under Islamic law given out of goodwill, lacking any legal obligation for repayment.

Presumption of Legal Intent in Commercial Transactions: The Court emphasized that in commercial dealings, there exists a presumption that parties intend to create legal obligations. This presumption places the burden on the party asserting the absence of such intent to provide evidence to the contrary. The Court stated, "The transaction was in the context of a commercial venture. The presumption, therefore, was that legal obligations were intended. The onus was on the parties asserting the absence of legal obligations."

Objective Test of Intention

The Court further clarified that the determination of intent to create legal relations is based on an objective assessment, not the subjective beliefs of the parties involved. This means that the actual conduct and the nature of the transaction are evaluated to infer intent, rather than relying solely on the parties' personal assertions.

Analysis of 'Quaraza-e-Hasana'

The assessee failed to provide authoritative texts or precedents from Islamic law to substantiate the claim that a "Quaraza-e-Hasana" inherently lacks a legal obligation for repayment. The Court noted, "No authoritative texts nor any principle or precedent recognised in Muslim Law was cited... to show that a transaction of this nature and incidents is known to and recognised by the personal law of the Muslims."

Given the commercial context and the lack of evidence negating legal intent, the Court concluded that the ₹4,00,000 loan was a legally enforceable debt and should be included in the assessee's taxable wealth. The Court held, "The admitted existence of a debt implies an obligation to repay... The loan would therefore become includible in the wealth of the assessee

PYQ Solution

Q. What amounts to 'Legal Insanity' that would entitle an accused for exemption from Criminal Liability?

Legal insanity is a defense in criminal law where the defendant asserts that, due to a severe mental illness or defect at the time of the crime, they were not capable of understanding the nature or the legality of their actions.

Section 84 of IPC

The defense of insanity is enshrined in Section 84 of the Indian Penal Code (IPC), which states:
"Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

From the wording of this law, the following essential elements for a successful legal insanity defense can be distilled:
1. The defendant was suffering from an 'unsoundness of mind' at the time of the act.
2. This mental condition made the defendant incapable of understanding the nature of their actions or realizing that what they were doing was wrong or against the law.

Interpreting Legal Insanity

Indian courts have consistently emphasized that for the defense under Section 84 to be applicable, the accused must have been incapable of understanding the nature of the act or knowing that it was wrong or contrary to law at the time of its commission. Mere medical insanity without this cognitive impairment does not suffice. In *Ratan Lal v. State of Madhya Pradesh* (1971), the Supreme Court held that the crucial time for determining unsoundness of mind is the time when the crime is committed

Indian courts have offered clarifications on the interpretation of Section 84 through numerous cases.
In **Dahyabhai Chhaganbhai Thakkar v. State of Gujarat** (AIR 1964 SC 1563), it was clarified that the burden of proof falls on the accused to establish their insanity. However, the standard of proof is not as stringent as that in a criminal trial. The accused only needs to show that the probability of insanity is higher than its improbability.

Shrikant Anandrao Bhosale v. State of Maharashtra (2002) reiterated the essentiality of the timing of the mental unsoundness. The court emphasized that the accused must have been of unsound mind at the time of committing the act for the defense of insanity to be applicable.

The case of **Ratan Lal vs State Of Madhya Pradesh (1970)** distinguished between medical and legal insanity. The court observed that for the defense of legal insanity to hold, the accused's cognitive faculties must have been so impaired as to make them incapable of understanding the nature of the act they committed.

Between Legal and Medical Insanity
It's crucial to differentiate between legal and medical insanity. Medical insanity refers to a clinical diagnosis of mental illness, whereas legal insanity pertains to the accused's mental state at the time of the offense, specifically their capacity to understand the act's nature or its wrongfulness. Not all forms of mental illness qualify for the legal defense under Section 84; the impairment must be severe enough to affect cognitive faculties related to understanding the act