

Weekly Update for Law optional
UPSC A mix of Conceptual, Current/Contemporary Topics
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1. Specific Performance Suit: Clarification by Supreme Court on Limitation Period

A. Valliammai v. K.P. Murali.

Article 54 of Part II of the Schedule to the Limitation Act, 1963 prescribes a three-year limitation period for filing a suit for specific performance from the date fixed for performance. In scenarios where no date is fixed, the limitation arises from when the plaintiff realises that the defendant has refused to perform.

In the case, a bench consisting of Justice Sanjiv Khanna and Justice Bela Trivedi referenced the 2006 case, Pachanan Dhara and Others v. Monmatha Nath Maity, which held that the court's duty is to ascertain if a timeline was established for the contract's execution and, if so, whether the lawsuit was lodged outside the specified period. If no timeline was specified, the crucial date becomes the moment the plaintiff discerned the defendant's refusal.

This judgement emerged from an appeal where, in 1995, the respondents initiated a suit for specific performance based on a sales agreement. The appellant raised various defences, including the plea of limitation. Despite the trial court's verdict for specific performance and the High Court's affirmation, the matter ascended to the Supreme Court for further clarity on the limitation aspect.

The Court noted that the limitation period began in 1991 when the 3rd Respondent sought an injunction. Written communications from the Appellant to the 3rd Respondent in the same year provided ample evidence of the Appellant's refusal to adhere to the agreement. Consequently, by the time the specific performance suit was lodged in 1995, it was already time-barred.

2. Insanity in Law vs Medicine

Rupesh Manger (Thapa) v. State of Sikkim.

The bench, consisting of Justices JB Pardiwala and Prashant Kumar Mishra, pointed out that for an accused to be exempted from the liability of an act under Section 84 of the Indian Penal Code (IPC), what needs to be established is legal insanity, not medical insanity.

- **Case Background:** The matter revolved around Rupesh Manger (Thapa), who was charged with the murder of his grandfather. Although the Trial Court found him not guilty based on the premise that he was unaware of his actions due to mental unsoundness, the Sikkim High Court later reversed this acquittal. The Supreme Court's intervention was sought to clarify the position of law and to adjudicate on the matter.
- **Supreme Court's Decision:** The Apex Court, while perusing the medical evidence presented and the accused's behaviour during the incident, asserted that the Trial Court's acquittal was neither perverse nor unsupported by evidence. It emphasised that if the Trial Court's conclusion is plausible, an Appellate Court should refrain from disturbing the acquittal merely because another view could be derived from re-evaluating the evidence.
- **Legal vs Medical Insanity:** A significant point underscored by the Court was the distinction between legal and medical insanity. While the term 'insanity' or 'unsoundness of mind' isn't explicitly defined in the Penal Code, its interpretation varies across contexts, pointing to different degrees of mental disorders. "The court is concerned with legal insanity and not with medical insanity," the Court emphasised.

Taking these considerations into account, the Supreme Court overturned the Sikkim High Court's decision and acquitted Rupesh Manger (Thapa).

3. Banks' Duty to Secure Deposits

Sarfraz Ali v. Punjab National Bank

- **Background:** Sarfraz Ali, the complainant, deposited Rs. 40,000 in a cash deposit machine at a Punjab National Bank (PNB) branch, following the directions of PNB officials. Alarming, he didn't receive any receipt for the deposit. Despite assurance from PNB that the amount would be credited within 24 hours, the money didn't appear in his account.
- **Bank's Stand:** PNB suggested that Ali might have been duped by miscreants who made him believe the machine had accepted the money and then potentially stole it. They based their arguments on CCTV footage and call logs.
- **Commission's Observation:** The Commission referred to the decision of the National Consumer Disputes Redressal Commission (NCDRC) in **Rishab Kumar Sogani v. State Bank Of India**. The principle derived from this case establishes that a security lapse within a bank's premises, especially when it results in a customer's loss, is clearly a deficiency in service.

- **Verdict:** Rejecting PNB's argument, the Commission held that the incident occurred within PNB's premises and therefore, the bank had a duty to ensure the safety of Sarfraz Ali's money. PNB was directed to refund the Rs. 40,000 along with 6% annual interest from the date of the incident. Additionally, PNB has to pay Rs. 30,000 as compensation and litigation costs to Ali, again with an interest of 6% per annum from the order date.

4. Kenya Court Puts Dignity and Rehabilitation at the Forefront

Julius Kitsao Manyeso v. Republic

- **Background:** Julius Kitsao Manyeso was sentenced to life imprisonment for a heinous crime committed in 2013 against a minor. The crime, termed "defilement", involved a four-and-a-half-year-old girl.
- **Constitutional Rights:** Articles 27 and 28 of the Kenyan Constitution are vital. They ensure every person's right to equality before the law and protect inherent human dignity. The Court asserted that mandatory life sentences infringe upon these rights.
- **European Court's Stance:** Drawing from international jurisprudence, the Kenya Court referenced a decision from the European Court of Human Rights in *Vinter and others vs The United Kingdom*. The European Court had declared indeterminate life sentences without the possibility of release or review as inhuman.
- **Verdict:** The Kenya Court of Appeal ruled that mandatory life sentences deny convicts the chance to be heard in mitigation. The Court substituted Manyeso's life sentence with a 40-year term, counting from his conviction date, striving to balance between the need for punishment and the potential for rehabilitation.

The decision underscores the growing global shift towards more rehabilitative, rather than purely punitive, criminal justice systems. It underlines the importance of ensuring that punishment, even for grave crimes, respects the dignity and human rights of the convict.

5. NGT: Protecting Water Bodies

Hariharan v. The District Collector Tiruvallur

With the Vinayagar Chaturthi festival approaching on September 18, the NGT's southern zone proactively responded to an application from a Chennai resident raising concerns about the potential pollution of water bodies due to idol immersions.

The Madras High Court had already revised the CPCB's idol immersion guidelines. These revisions have been communicated to the districts, urging local authorities to abide by them.

The NGT recognized the significance of the applications as steps towards bettering the environmental health of the region. Immersions in artificial tanks, as opposed to natural water

bodies, ensure easier collection and disposal of remnants by local authorities, thereby mitigating pollution.

A three-member committee has been formed comprising of significant officials:

- Secretary to Government – Public Department
- Additional Chief Secretary/Commissioner – Revenue Administration
- Chairman – Tamil Nadu Pollution Control Board This committee, headed by the Additional Chief Secretary to Government, Department of Environment, Climate Change and Forests, is mandated to simplify and enforce idol immersion guidelines.

NGT's Directions: The NGT has mandated that the committee streamline these guidelines according to the CPCB's directives. It emphasised avoiding eco-sensitive areas like Pulicat Lake, various rivers, Ramsar wetlands, and estuaries.

6. Case of the Week: Romesh Thapar v. The State of Madras (1950)

Factual Background:

Romesh Thapar was the editor of an English weekly journal called "Cross Roads". This journal, published in Bombay (now Mumbai), was critical of some policies adopted by the then government. The State of Madras, by virtue of an order issued under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, prohibited the entry and circulation of the said journal. The reasoning behind the ban was that the articles published in the journal had a potential to incite feelings of hatred and enmity among the different sections of the population and could lead to public disorder.

Issues Raised:

- (i) Whether the impugned Act and the consequent order were violative of the petitioner's right to freedom of speech and expression under Article 19(1)(a) of the Constitution.
- (ii) Whether the restrictions imposed under Section 9(1-A) of the Madras Act were protected under Article 19(2) as reasonable restrictions in the interest of public order.

Judgment and Reasoning:

Article 19(1)(a) and its Scope: The Supreme Court, in interpreting Article 19(1)(a), emphasised the fundamental nature of the right to freedom of speech and expression. The Court highlighted that this right is not absolute and can be subjected to reasonable restrictions under Article 19(2).

Article 19(2) and 'Public Order': The Court noted that at the time of the case, Article 19(2) permitted the State to make a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression only in the interest of "the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence". However, the term "public order" was interpreted restrictively. The Court held that unless a law restricting the freedom of speech and expression was directly related to the interests of the security of the State, it could not be upheld as a reasonable restriction.

The Court concluded that the impugned section of the Madras Act was not solely concerned with the maintenance of public order or the security of the State. The restriction imposed was wider in amplitude than what Article 19(2) permitted. As such, the Court ruled that the ban on the journal's circulation was unconstitutional and violative of Article 19(1)(a).

7. Repeated PYQ

What test has the Supreme Court prescribed to understand “the rarest of the rare cases theory” while inflicting Capital Punishment? Can one argue that Capital Punishment in any case is against society?

The doctrine of "rarest of the rare cases" was propounded by the Supreme Court of India as a metric to determine when the death penalty can be awarded. This doctrine emerged in the landmark judgement of the Supreme Court in the case of *Bachan Singh v. State of Punjab* (1980). The Court sought to limit the imposition of the death penalty only to cases where the collective conscience of society would be shocked if any punishment other than the death penalty was awarded.

In the aforementioned case, the Supreme Court propounded certain guiding principles to be considered while deciding whether a case can be classified as the "rarest of the rare".

The test revolves around the following considerations:

- a) Nature and Gravity of the Crime:** The court should consider the heinousness, brutality, and cold-blooded nature of the crime. The nature of the crime should be such that it invokes a sense of revulsion in society.
- b) Motive behind the Crime:** The motive which compelled the perpetrator to commit the crime is also an important factor. A crime committed with a particularly deplorable, depraved, or malicious intent can sway the scales towards awarding the death penalty.
- c) Anti-social or Socially Abhorrent Nature of the Crime:** The crime should not only be heinous in nature, but it should also have been committed in a manner that makes it socially abhorrent. For instance, if a crime is committed with an intention to create fear or terror in society.
- d) Magnitude of the Crime:** Crimes that result in grave consequences, especially where the resultant impact is large-scale and affects a significant part of society, are also considered under this parameter.

Argument Against Capital Punishment

a) Philosophical Grounds:

Many believe that no one, including the State, has the right to take away life, as doing so is in itself an act of violence. Furthermore, the irreversible nature of the death penalty leaves no room for rectification in the event of a judicial error.

b) Legal Arguments:

From a legal perspective, it can be argued that capital punishment might violate the basic tenets of the Constitution, like the right to life and the protection against cruel and inhuman treatment.

c) Societal Perspective:

From a societal viewpoint, one can argue that capital punishment does not serve as a more effective deterrent than life imprisonment. Instead, it perpetuates a cycle of violence, which is counterproductive to the goal of nurturing a peaceful society.

