

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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1. Supreme Court's Direction to Prevent Arbitrary Arrest of Denotified Tribes

The Supreme Court of India has taken significant steps to prevent the arbitrary arrest of members of Denotified Tribes, emphasizing adherence to guidelines laid out in two landmark cases: *Arnesh Kumar v. State of Bihar* (2014) and *Amanatullah Khan v. The Commissioner of Police, Delhi* (2024). These directions were issued to address and curtail caste-based discrimination in prison systems and policing practices in India.

Guidelines for Police Arrest The Supreme Court reiterated the need to prevent the misuse of arrest powers, recognizing that arbitrary arrests can lead to stigmatization and violation of fundamental rights, particularly for marginalized communities. To this end, the Court directed strict adherence to the principles established in the *Arnesh Kumar* and *Amanatullah Khan* cases:

- Arnesh Kumar Guidelines:** The Supreme Court in *Arnesh Kumar v. State of Bihar* (2014) underscored that arrest is a serious action that should be taken with caution. The judgment criticized the police's overuse of arrest powers, which often leads to humiliation, freedom curtailment, and lasting scars on those arrested. The Court condemned the tendency to "arrest first and proceed later," which has often been driven by a colonial mindset and corrupt practices within the police force. The Court advocated for judicial review and emphasized that arrest should not be used as a tool for oppression.
- Amanatullah Khan Guidelines:** In *Amanatullah Khan v. The Commissioner of Police, Delhi* (2024), the Supreme Court tackled the issue of the police's use of "history sheets," particularly in cases where individuals are branded as 'bad characters.' The Court held that such records should not include minors or relatives of the accused, unless there is evidence of their direct involvement. Additionally, the Court maintained that a "History Sheet" is an internal police document and must not be made public, protecting the privacy and identity of those involved.

Impact on the Rights of Denotified Tribes The Supreme Court's directions serve to protect the rights of Denotified Tribes by limiting the misuse of arrest powers and curbing discriminatory practices that result in social stigmatization. The Court highlighted the potential lifelong consequences of arbitrary arrests, including barriers to employment, livelihood, and access to basic necessities. The judgment emphasized the importance of police exercising caution and diligence, ensuring that arrests are made based on substantial evidence rather than stereotypes or suspicions.

The direction arose from a Public Interest Litigation (PIL) filed by Sukanya Shantha, a journalist, which argued that the current state prison manual and rules were discriminatory against Denotified Tribes, violating Articles 14, 15, 17, 21, and 23 of the Constitution of India. The PIL highlighted that Denotified Tribes have historically been stigmatized as "habitual offenders," a categorization stemming from the 1871 Criminal Tribes Act enacted during British rule. This act essentially criminalized certain tribes based on the presumption of hereditary criminality.

2. UN Human Rights Council Examines the Nuclear Legacy in the Marshall Islands

On October 4, 2024, the UN Human Rights Council held a dialogue to address the lasting consequences of nuclear testing in the Marshall Islands. Representatives from the Pacific nation highlighted the significant human rights issues that have arisen due to 67 nuclear tests conducted by the United States between 1946 and 1958, resulting in some of the world's highest cancer rates among the Marshallese population.

The OHCHR Report on the Nuclear Legacy Research by the UN Human Rights Office (OHCHR) revealed that the nuclear testing led to widespread radioactive pollution of land and sea, displacing communities and causing severe health issues.

The OHCHR's report emphasizes the impact of radiation exposure on the Marshallese, detailing the high incidence of cancer, miscarriages, and "jellyfish babies"—infants born with translucent skin and lacking bones. Additionally, the displacement resulting from testing disrupted Indigenous communities' cultural traditions and burial practices, leading to a disconnection from their heritage.

Human Rights and Information Gaps : During consultations with the Marshallese, information gaps were the most frequently raised issue. The lack of comprehensive information regarding the tests and their consequences has hindered efforts to address the long-term impact on the population.

OHCHR's Recommendations The OHCHR report urges the Marshall Islands, the US Government, the UN, and other stakeholders to establish truth and non-repetition mechanisms, suggesting a transitional justice-driven approach to address the nuclear legacy. This approach aims to achieve accountability, truth, and reparations, drawing lessons from the Marshall Islands that are applicable globally, as other regions continue to face similar nuclear testing consequences.

3. Registrar Of Co-Operative Societies Is 'Public Authority' : Kerala High Court

The Kerala High Court, in the case of *P.R. Ramachandran v. The State Chief Information Commissioner* (2024), ruled that the Registrar of Co-operative Societies qualifies as a "public authority" under the **Right to Information (RTI) Act, 2005**. The decision establishes that the Registrar is expected to disclose information obtained from co-operative societies under their control, provided the information is not exempt under Section 8 of the RTI Act.

The Division Bench of the Kerala High Court, comprising Justice A. Muhamed Mustaque and Justice S. Manu, examined the applicability of the RTI Act with respect to the Co-operative Societies Act. The Court confirmed that the Registrar of Co-operative Societies is indeed a public authority under Section 2(h) of the RTI Act. Hence, the Registrar is expected to provide information as per Section 2(f), subject to the exemptions listed in Section 8 of the Act.

The Court explained that the Registrar has supervisory and administrative control over co-operative societies, allowing them to gather and disclose information as permitted by law.

The Court referred to the Supreme Court's decision in *Thalappalam Service Co-operative Bank Ltd. v. State of Kerala* (2013), where it was held that co-operative societies themselves do not qualify as public authorities under the RTI Act. However, the Registrar, who has administrative control over these societies, is obliged to provide information, as long as it is permissible under law.

4. Moral right under copyright Law of India and Abroad

In India, moral rights are recognized under the Copyright Act, 1957, which aligns with international principles established under the Berne Convention for the Protection of Literary and Artistic Works (to which India is a signatory).

1. **Section 57 of the Copyright Act, 1957** specifically covers moral rights, termed as "author's special rights." These rights include:
 - Right of Attribution: The right to claim authorship of the work.
 - Right to Integrity: The right to prevent any distortion, mutilation, modification, or other actions that could harm the author's reputation or honor.
2. **Enforcement and Duration:** Moral rights in India endure even after the economic rights have expired and can be enforced by the author or their legal representatives.
3. **Exceptions:** Indian law allows for "fair use" exceptions, but any such use must not harm the author's reputation or honor. The interpretation of moral rights in India has generally been broad, with courts often considering moral rights as important as economic rights.

Moral Rights in Other Jurisdictions

1. United States: The United States does not have an extensive regime for moral rights like many other jurisdictions. It only partially recognizes moral rights through the Visual Artists Rights Act (VARA) of 1990, which is limited to visual arts.

- VARA grants rights to attribution and integrity, but only for works of visual art like paintings, sculptures, and photographs. VARA rights last for the life of the author.
- Outside of visual arts, moral rights are minimally recognized, relying instead on principles of contract law or defamation to protect an author's honor and reputation.

2. United Kingdom: The UK recognizes moral rights under the Copyright, Designs and Patents Act 1988. These rights are:

- **Right of Attribution:** The right to be identified as the author of a work.
- **Right of Integrity:** The right to object to derogatory treatment of the work that harms the author's reputation.
- **Right against False Attribution:** The right not to have a work falsely attributed to an author.

The moral rights in the UK last for the duration of the economic copyright, which is generally the life of the author plus 70 years. However, these rights can be waived by the author.

3. European Union: The EU Copyright Directive (Directive 2001/29/EC) provides a framework for moral rights, but it allows individual countries to interpret and implement their own moral rights protections.

In countries like France and Germany, moral rights are robustly protected. French copyright law (*droit d'auteur*) considers moral rights perpetual, inalienable, and imprescriptible, meaning they cannot be waived or transferred and last indefinitely. Germany has similar strong protections under its *Urheberrecht* (copyright law).

4. Canada: Canadian copyright law recognizes moral rights under the Copyright Act. These include:

- The right of attribution and right to integrity, as well as the right against false attribution.
- The rights are enforceable for the same duration as economic rights (life of the author plus 50 years).
- While moral rights cannot be transferred, they can be waived, offering flexibility for creators.

Weekly Focus

Case of the week: A.K. Kraipak v. Union of India

In the landmark case *A.K. Kraipak v. Union of India*, the Supreme Court of India dealt with the application of the principles of natural justice in administrative proceedings. This case marked a turning point, as it blurred the line between administrative and quasi-judicial functions and emphasized the importance of fairness and impartiality in decision-making processes.

Facts: The case arose when a selection board was formed to select officers for the Indian Forest Service (IFS) in the state of Jammu & Kashmir. A member of the selection board, Naquishbund, was also a candidate for the IFS post.

Though he did not participate when his name was being considered, he was involved in discussions regarding other candidates, which raised concerns about bias. The petitioners, including some gazetted officers from the forest department, challenged the selection on grounds of natural justice, arguing that Naquishbund's presence influenced the board's decisions.

Issues: The primary issues were whether the principles of natural justice applied to administrative proceedings and whether the selection process was tainted by bias, thereby warranting the quashing of the appointments.

Arguments:

- The **petitioners** contended that the selection process violated natural justice principles, arguing that a person should not be both a candidate and an adjudicator in the same selection process.
- The **respondents** argued that the selection board's role was administrative and not quasi-judicial, and thus, natural justice principles were not applicable.

Judgment: The Supreme Court held that the selection process violated natural justice principles due to the real likelihood of bias.

The court extended the principles of natural justice to administrative actions, asserting that even administrative bodies have a duty to act fairly.

The selection made by the board was invalidated, setting a precedent that the principles of natural justice are applicable beyond judicial functions to administrative decisions as well

PYQ Solution

Q8.(c) “The object of Public Liability Insurance Act, 1991 is to provide relief to the victims of accidents in hazardous industries in addition to any other right to claim compensation.” Explain with case law. (15 MARKS)

The Public Liability Insurance Act (PLIA), 1991 was enacted in the backdrop of the Bhopal gas tragedy, one of the world's worst industrial disasters. Its purpose is to ensure that businesses involved in hazardous activities carry liability insurance to provide immediate relief to persons affected by accidents occurring as a result of such activities.

Salient Features of the PLIA, 1991: The Act applies to all owners associated with the production or handling of any hazardous substances.

- **Mandatory Public Liability Insurance:** The Act mandates that these owners must have insurance policies covering potential liability arising out of any mishap. This ensures immediate relief to the affected parties without waiting for a lengthy litigation process.
- **Immediate Relief:** The Act sets out the provision of immediate relief to the affected persons of an accident on a no-fault basis. This means that compensation is awarded without a prolonged examination of the fault or negligence of the owner.
- **Application in Addition to Other Acts:** The relief under PLIA is in addition to any other relief that the affected party may seek under other laws. This means that victims can claim compensation under this Act and also under other legal avenues like tort law.
- **Establishment of the Environmental Relief Fund:** The Act provides for the establishment of an Environmental Relief Fund, financed through contributions from owners and occasionally from the Central Government, ensuring that funds are readily available for disbursement to victims.

While the Act itself is crucial in providing immediate relief in instances of industrial accidents, case law helps in interpreting and enforcing its provisions.

Indian Council for Enviro-Legal Action vs. Union of India (1996) 5 SCC 281: The Supreme Court emphasized the importance of the principle of 'polluter pays'. It highlighted that businesses engaged in hazardous activities have an absolute liability to compensate those harmed due to an accident. The judgment underscores the ethos behind the PLIA, 1991, which mandates companies to provide immediate compensation to victims.

Vellore Citizens Welfare Forum vs. Union of India (AIR 1996 SC 2715): The Court observed that once the activity carried out is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused irrespective of the fact whether he took reasonable care while carrying out such hazardous activity.

The Public Liability Insurance Act, 1991, embodies a proactive approach to ensuring that victims of industrial mishaps in hazardous sectors receive immediate compensation, emphasizing the principle that the polluter must pay.

[Law Optional and GS Papers overlap](#)

Law optional and GS - II: Parliamentary committees

Parliamentary committees are an integral part of the legislative system in India. They perform the crucial role of examining bills, policies, and government functions with a degree of detail that is not feasible in full parliamentary sittings.

Parliamentary committees are considered to be the **"Mini-Parliaments"** or **"Engines of Legislature"** due to their significant role in the legislative process and functioning.

Parliamentary committees form the backbone of the legislative scrutiny and accountability system in India. Their role in analyzing bills, overseeing policy implementation, and scrutinizing government finances makes them an indispensable part of the parliamentary framework.

Functions and Role of Parliamentary Committees

The key functions of parliamentary committees are to:

1. **Examine Bills and Proposals in Detail:** Committees are often referred bills for a closer, in-depth analysis that is not possible in a full house debate. For instance, DRSCs play a crucial role in this regard by studying bills related to their respective ministries.
2. **Ensure Executive Accountability:** By examining the workings of the executive and the implementation of policies, committees serve as a mechanism for enforcing accountability. The financial committees like PAC play a significant role in scrutinizing government expenditures.
3. **Policy and Performance Oversight:** Committees analyze various policies and programs of the government to ensure that they align with public interest. They also assess the performance of ministries and provide recommendations to enhance efficiency and effectiveness.
4. **Facilitate Informed Decision-Making:** Through their detailed examination and reports, committees provide valuable information and recommendations that aid informed decision-making in the full House sittings.

Classification of Parliamentary Committees

Parliamentary committees in India can be broadly classified into two types: **Standing Committees** and **Ad hoc Committees**. Standing committees are permanent and are constituted every year or periodically, while ad hoc committees are temporary and are set up for a specific purpose, dissolved once that task is completed.

Standing Committees

Standing committees are established by the Parliament under its rules of procedure and continue to function irrespective of the dissolution of one House. The key standing committees are:

1. **Financial Committees:** These committees scrutinize government expenditure and financial policies to ensure transparency, accountability, and fiscal discipline. They include:
 - **Public Accounts Committee (PAC):** This committee examines the annual audit reports of the Comptroller and Auditor General (CAG) and ensures that public funds are utilized efficiently and in accordance with the law. The PAC consists of 22 members, 15 from the Lok Sabha and 7 from the Rajya Sabha.
 - **Estimates Committee:** This is the largest parliamentary committee, with 30 members, all drawn from the Lok Sabha. Its main function is to examine the estimates included in the budget and suggest economies in public expenditure.
 - **Committee on Public Undertakings (COPU):** This committee scrutinizes the reports and accounts of public sector undertakings (PSUs) and assesses their performance.
2. **Department-Related Standing Committees (DRSCs):** There are currently 24 such committees, each tasked with overseeing the work of specific ministries or departments. They have representatives from both Lok Sabha and Rajya Sabha and focus on examining bills, budgets, and policies related to their specific ministry. The DRSCs play a significant role in providing recommendations and feedback to ministries for better governance.
3. **Committees to Inquire and Advise:** These include:
 - **Committee on Petitions:** This committee examines petitions presented to the Parliament and suggests remedial action.
 - **Committee on Privileges:** It investigates any breach of privilege or contempt of the House by members, officials, or outsiders.
 - **Committee on Ethics:** This committee examines the conduct of members and suggests measures for maintaining the decorum and discipline of Parliament.
4. **House-Keeping Committees or Internal Committees:** These are concerned with the internal working and administration of the Parliament. They include:
 - **Business Advisory Committee (BAC):** The BAC decides the time allocation for the discussion of bills and other business in the House.
 - **Rules Committee:** It considers matters of procedure and conduct of business and recommends amendments to the rules of the House.
 - **Committee on Absence of Members:** It examines cases of member absenteeism without permission and makes recommendations.

Ad hoc Committees

Ad hoc committees are formed for specific purposes and are dissolved once their assigned task is completed. They include:

1. **Select and Joint Committees on Bills:** When a particular bill needs to be examined in detail, it can be referred to a select committee (comprising members of one House) or a joint committee (comprising members of both Houses). These committees examine the bill clause by clause and make recommendations for its improvement.
2. **Inquiry Committees:** These are formed to investigate and report on particular issues, such as the Joint Parliamentary Committee (JPC) set up to examine scams or specific incidents, like the Bofors Scandal JPC and the JPC on the 2G Spectrum Allocation.
3. **Committees to Study Specific Issues:** Such committees can be formed to study particular issues, policies, or governmental initiatives. For instance, the JPC on the Goods and Services Tax (GST) played a key role in shaping the legislation for implementing GST in India.

Challenges and Areas of Improvement

While parliamentary committees have enhanced legislative scrutiny and executive accountability, they face several challenges:

1. **Limited Transparency and Public Engagement:** Committee proceedings are generally not open to the public, leading to a lack of transparency in their functioning. Greater public access and engagement could enhance the legitimacy of their recommendations.
2. **Recommendations Not Binding:** The recommendations of parliamentary committees, although important, are not binding on the government. Many committee reports are not implemented or even discussed in Parliament, reducing their overall impact.
3. **Need for Strengthening Committee System:** The efficiency and effectiveness of parliamentary committees can be further enhanced by providing more research support, resources, and training to members, and by ensuring regular interaction with external experts and stakeholders.
4. **Timely Formation and Reconstitution:** Delays in the formation and reconstitution of committees often affect their functioning. Timely appointments and ensuring committees meet regularly can help in more effective oversight.

Law Optional and GS - IV: Corporate governance

Corporate governance has emerged as a focal point in discussions about economic growth, corporate accountability, and ethical practices. In India, the concept encompasses both legal and ethical dimensions, aiming to ensure that corporations operate transparently, responsibly, and in a manner that protects the interests of all stakeholders.

Statutory Framework for Corporate Governance

The foundation of corporate governance in India is laid down in various laws, regulations, and guidelines, the most prominent being the Companies Act, 2013, and the Securities and Exchange Board of India (SEBI) regulations. The Companies Act introduced significant changes, focusing on transparency, accountability, and stricter compliance requirements. Key aspects of corporate governance under the Act include:

1. **Board Composition and Independence:** The Act mandates the inclusion of independent directors on the board, to ensure balanced decision-making and unbiased oversight. Section 149(4) specifies that listed companies must have at least one-third independent directors, underscoring the importance of objective governance.
2. **Audit Committees and Financial Disclosures:** The formation of audit committees, as mandated by Section 177 of the Companies Act, ensures greater scrutiny of financial disclosures. Furthermore, Section 134 requires companies to disclose detailed financial statements and management reports, fostering transparency.
3. **Corporate Social Responsibility (CSR):** Section 135 of the Companies Act introduced a compulsory CSR regime for companies meeting certain financial thresholds. These companies are required to spend at least 2% of their average net profits over three years on CSR activities, thereby integrating ethical considerations into corporate operations.
4. **Whistleblower Mechanisms:** The Companies Act also provides mechanisms for safeguarding whistleblowers who raise concerns about fraud or mismanagement within the organization. This aligns with a broader global trend toward fostering ethical corporate cultures by providing protection to individuals who expose corporate wrongdoing.

Integrating Law and Ethics

Corporate governance in India stands at the crossroads of law and ethics, with both dimensions reinforcing each other. While legal norms provide the minimum standards for governance, ethical principles elevate these standards by promoting a culture of responsible and inclusive corporate behavior. This is particularly evident in the provisions for CSR, whistleblower protection, and board independence, which simultaneously address legal requirements and ethical imperatives.

The Role of Regulatory Reforms

Ongoing regulatory reforms in India reflect the dual focus on legal compliance and ethical governance. The **Kotak Committee on Corporate Governance (2017)**, formed under SEBI's direction, recommended enhancing transparency, strengthening board oversight, and promoting better disclosures—all of which are rooted in both legal and ethical perspectives. The reforms introduced in response to the Committee's report have aimed to make corporate governance more effective by emphasizing both compliance and ethical business practices.

International Influence and Global Best Practices

India's corporate governance framework also draws inspiration from international standards, such as the **OECD Principles of Corporate Governance** and the **UN Global Compact**, which stress both legal compliance and ethical practices. The alignment of Indian regulations with global norms has further strengthened the corporate governance landscape by promoting ethical considerations as an intrinsic part of corporate functioning.

Judicial Interpretation and Corporate Governance

Indian courts have further strengthened corporate governance by interpreting statutory provisions to align with global best practices. In the landmark case of **Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors.** [(2021) SCC Online SC 272], the Supreme Court dealt extensively with issues of corporate governance, particularly focusing on boardroom management and the rights of minority shareholders. The Court underscored the principles of fairness, accountability, and transparency, noting that "directors, whether executive or non-executive, are fiduciaries who must act in the best interest of the company, devoid of any personal motive."

Another important case is **ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd.** [(2010) 10 SCC 1], where the Supreme Court emphasized that the "board of directors must ensure adherence to statutory provisions, ethical norms, and fiduciary responsibilities, thereby preserving not just the interests of shareholders, but also those of creditors, employees, and other stakeholders."