

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 11th June - 17th June 2023**

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## 1. Amendments to Competition Act, 2023

The Competition (Amendment) Act, 2023, was passed by the Indian Parliament in April 2023. The Act introduces a number of reforms to the Competition Act, 2002, in order to strengthen competition law in India.

Some of the key amendments include:

- Increased deal value threshold: The threshold for notifying combinations to the Competition Commission of India (CCI) has been increased from INR 3000 crore to INR 2000 crore.
- Reduced approval period: The CCI now has 150 days to approve or reject a combination, down from 210 days.
- Broader definition of "control": The definition of "control" has been broadened to include the ability to exercise material influence over the management, affairs, or strategic commercial decisions of an enterprise.
- New factors for determining relevant markets: The CCI can now consider the costs associated with switching demand or supply to other goods or services, and the categories of customers, when determining relevant product and geographic markets.
- Increased penalty for false statements or omissions: The penalty for making false statements or omissions in a combination notification has been increased from INR 1 crore to INR 5 crore.
- Penalty on global turnover: The CCI can now impose a penalty of up to 10% of the global turnover of an enterprise for anti-competitive conduct.
- Increased powers of the Director General: The Director General has been given more powers to investigate anti-competitive conduct, including the power to summon agents of a company, conduct dawn raids, and seek information and documents.
- Settlements and commitments framework: The CCI can now accept settlements and commitments from parties involved in anti-competitive investigations.

- Widened scope of anti-competitive agreements: The scope of anti-competitive agreements has been widened to include entities that are not engaged in identical or similar trade but are part of a "hub and spoke" cartel arrangement.
- Limitation period for filing complaints: Complaints must be filed within three years of the date on which the cause of action arises.
- Deposit on penalty for appeals: An appellant must deposit 25% of the penalty amount to file an appeal against an order of the CCI.
- IPRs cannot be used as a defence in abuse of dominant position cases: The Amendment Act has not changed the fact that IPRs cannot be used as a defence in cases of abuse of dominant position.

These reforms are intended to strengthen competition law in India and to protect consumers from anti-competitive practices.

## 2. Right to Default Bail - A Fundamental Right

The Supreme Court of India has recently ruled in **Ritu Chhabria v UOI Judgment**, that every accused person has a right to default bail, meaning that they can be released on bail without having to show any special reasons. This is a significant development in Indian law, as it means that the presumption of innocence is now stronger than ever before.

The right to default bail is based on the fundamental right to life and liberty guaranteed by Article 21 of the Constitution of India. This right cannot be taken away lightly, and the Supreme Court has rightly held that the burden of proof lies with the prosecution to show why an accused person should not be released on bail.

Foundation Batch

14th July, 2023, Time: 4-6 PM

4.5 MONTH, MON-THU CLASS

By Aditya Tiwari Sir

### Welcome Development

The right to default bail is a welcome development, as it will help to ensure that innocent people are not unnecessarily detained in jail. It will also help to reduce the burden on the overcrowded jails in India.

The Supreme Court has set out a number of factors that the courts should consider when deciding whether or not to grant default bail. These factors include the nature of the offence, the severity of the punishment, the accused person's criminal history, and the possibility of the accused person absconding.

The right to default bail is not absolute, and there will be cases where the courts will decide that it is not appropriate to grant bail. However, the Supreme Court's ruling is a significant step towards ensuring that the presumption of innocence is upheld in India.

Here are some of the key points from the judgement:

- Every accused person has a right to default bail.
- The burden of proof lies with the prosecution to show why an accused person should not be released on bail.

- The courts should consider a number of factors when deciding whether or not to grant default bail, including the nature of the offence, the severity of the punishment, the accused person's criminal history, and the possibility of the accused person absconding.

The right to default bail is a significant development in Indian law, and it is likely to have a positive impact on the criminal justice system. It will help to ensure that innocent people are not unnecessarily detained in jail, and it will also help to reduce the burden on the overcrowded jails in India.

### 3. Gender Neutral Sexual Offense: Need of the hour

Gender-neutral sexual offense laws are those which are drafted in a manner that does not discriminate on the basis of sex. They account for the fact that anyone, irrespective of their gender, can be a victim or a perpetrator of sexual offenses. As a law graduate, understanding the nuances of this concept and its application in different jurisdictions is essential.

#### Concept and Importance of Gender-Neutrality

In many traditional criminal justice systems, sexual offenses have been defined primarily from a male perpetrator/female victim perspective. However, the call for gender-neutrality in sexual offense laws has grown stronger over time due to several reasons:

**a. Recognition of All Victims:** It is increasingly acknowledged that not only women but men and individuals identifying as non-binary or transgender can also be victims of sexual offenses. Gender-neutral laws offer legal protection to all victims, making the justice system more inclusive.

**b. Breaking Stereotypes :** Gender-neutral laws challenge traditional stereotypes that only men can be perpetrators of sexual offenses and only women can be victims.

#### International Perspectives

Several jurisdictions have already adopted gender-neutral language in their sexual offense laws:

**a. United Kingdom:** The Sexual Offences Act 2003 in the UK is gender-neutral and focuses on the lack of consent as the primary determinant of a sexual offense.

**b. Canada :** The Canadian Criminal Code does not differentiate between male and female in sexual offense laws. It focuses on the act of non-consensual sex, making it gender-neutral.

#### Gender-Neutrality in Indian Sexual Offense Laws

In the context of India, the primary law dealing with sexual offenses, the Indian Penal Code (IPC), is not gender-neutral. Section 375, which defines rape, applies only to women victims and men perpetrators. However, the Criminal Law (Amendment) Act 2012 introduced certain gender-neutral offenses like stalking and sexual harassment.

Notably, the **Justice Verma Committee**, formed after the 2012 Delhi gang-rape case, recommended making rape laws gender-neutral. But this recommendation was not accepted due to concerns that it might be misused given the societal and power dynamics in India.

The need for gender-neutral laws has been highlighted in a few cases. For instance, in '**Independent Thought vs. Union of India (2017)**', the Supreme Court read down Exception 2 to Section 375 of IPC to hold that sexual intercourse with a wife below 18 years of age would amount to rape. This, though not directly related to gender-neutrality, highlights the evolving interpretations of sexual offenses in Indian law.

### The Debate: Pros and Cons

#### Pros

**a. Protection for All Victims:** Supporters argue that men, transgender, and non-binary individuals who are victims of sexual violence require legal protection, which can be provided by gender-neutral laws.

**b. Greater Reporting:** Gender-neutral laws could encourage more victims, regardless of their gender, to report sexual offenses.

#### Cons

**a. Misuse of Law:** They argue that, given the significant power imbalances in Indian society, there is a risk of such laws being misused to file false cases.

**b. Overlooking Context:** Critics also worry that gender-neutrality in laws might overlook the structural nature of sexual violence, often rooted in patriarchy and power imbalances.

While the need for gender-neutral sexual offense laws is evident, any move in this direction must be undertaken carefully, considering both the protection of all potential victims and the possible misuse due to societal power dynamics.

## 4. Force Majeure and Covid - 19 Pandemic

The global pandemic led to a surge in disputes over force majeure clauses, which can excuse a party from performing their contractual obligations due to unforeseen events beyond their control. There is ongoing discussion about the criteria and circumstances that should trigger a force majeure clause, given the massive disruption caused by the pandemic.

Force majeure is a legal concept that allows parties to a contract to be relieved from fulfilling their contractual obligations due to unforeseen circumstances that are beyond their control, making performance impossible. The COVID-19 pandemic is one such circumstance that has triggered debates around force majeure.

Indian courts have dealt with force majeure clauses in several cases. In general, the application of force majeure in India is governed by Section 32 and Section 56 of the Indian Contract Act, 1872. Section 32 pertains to contingent contracts and applies to scenarios where parties have a force majeure clause incorporated into their contract. Section 56, on the other hand, applies to contracts where the parties did not contemplate a force majeure event (doctrine of frustration).

The burden of proof is on the party invoking force majeure. They must show that the event is force majeure as defined by the contract, that the event was the cause of their inability to perform, and that they could not reasonably have foreseen and guarded against the event or its consequences.

In one key ruling prior to the pandemic, the Supreme Court of India held in **Energy Watchdog v. Central Electricity Regulatory Commission (2017)** that economic hardship is not a ground to trigger a force majeure clause. This implies that the inability to perform obligations due to financial strain caused by COVID-19 might not be covered under a force majeure clause.

However, the COVID-19 pandemic is an unprecedented event, and the way Indian courts interpret and apply force majeure clauses in this context would set important precedents. It would depend on a multitude of factors, including but not limited to, the specific language of the contract, the extent to which the pandemic affected the parties' ability to perform their contractual obligations, and whether there were any governmental orders that impacted the contract.

## 5. Continuing offence under IPC

Continuing offences under the Indian Penal Code (IPC) are those where an offence continues over a period of time. The offender continues to commit the offence for as long as the conditions required for constituting the crime continue.

**Section 472** of the Indian Penal Code deals with continuing offences. It states that "in the case of a continuing offence, a fresh period of limitation begins to run at every moment of the time during which the offence continues."

To understand the concept, take the example of someone occupying a property unlawfully. Here, the act of trespass does not end with the illegal entry into the property, but continues for as long as the trespasser remains on it. This would be considered a continuing offence.

Another example would be bigamy. According to **Section 494** of the Indian Penal Code, a person is guilty of bigamy if they marry someone while already being married to another person. Here, the offence is considered to be continuing for as long as the second marriage lasts, and can be prosecuted at any time while the offence continues.

However, it should be noted that not all offences can be considered continuing offences. Only those offences where the act or condition of affairs is of a continuing nature can be considered as such. For example, theft is not a continuing offence. Once the act of stealing is completed, the offence is also considered to have been completed, even if the stolen item is in the thief's possession.

The concept of continuing offences in the IPC is relevant to understand the application of the statute of limitations - the period of time after which a crime cannot be prosecuted. For continuing offences, the



statute of limitations starts when the offence stops. For example, if a person occupies a property unlawfully for five years, the period of limitation for prosecuting the offence would start after the person vacates the property.

### Cases

To comprehend the nature of continuing offences, let's consider the case of **State of Bihar v. Deokaran Nenshi, AIR 1972 SC 955**. In this case, the Supreme Court had to determine whether illegal mining of mica beyond the licensed area constituted a continuing offence. The court concluded that it did - the act of mining did not end at the moment the mica was extracted, but continued for as long as the illegal miner remained in possession of the illicitly extracted mineral.

Another illustrative case is **Smt. Krishna H. Bajaj vs M/s. Vijay Kumar Chopra & Ors., 1995 AIR 1798**, in which the Supreme Court held that the offence of defamation under Section 500 IPC was a continuing offence. In this case, the defendant continued to circulate defamatory material about the plaintiff over a period of time, and the court found this to be a continuing offence because the defamatory material was still causing harm to the plaintiff's reputation.

Contrarily, not all offences are continuing offences. Some actions are completed once performed, and the offence does not continue even if its effects or consequences do. For example, theft is not a continuing offence. In **Mohd. Ashraf Malik vs State of J&K (AIR 2001 SC 2845)**, the court clarified that the theft was complete once the accused had dishonestly taken the property out of the possession of any person, even though he continued to remain in possession of the stolen property.

## 6. Case of the week:

R.C. Cooper v. Union of India was a landmark case decided by the Supreme Court of India in 1970. The case challenged the constitutional validity of the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969, which had nationalised 14 major banks in India.

The petitioner, R.C. Cooper, was a shareholder in one of the nationalised banks. He challenged the ordinance on the grounds that it violated his fundamental rights under Articles 14 (equality before the law), 19(1)(f) (right to property), and 31(1) and (2) (right to compensation for property acquired by the State).

The Supreme Court held that the ordinance was unconstitutional. The court found that the ordinance violated the right to equality under Article 14 because it discriminated against shareholders in nationalised banks. The court also found that the ordinance violated the right to property under Article 19(1)(f) because it did not provide for adequate compensation.

The Supreme Court's decision in R.C. Cooper v. Union of India was a major setback for the government's nationalisation of banks. The decision forced the government to enact a new law, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, which provided for adequate compensation to shareholders in nationalised banks.

The R.C. Cooper case is an important precedent in Indian law. The case established the principle that the government cannot violate fundamental rights, even in the name of nationalization. The case also established the principle that the government must provide adequate compensation for property that it acquires.

The R.C. Cooper case is a reminder that the Indian Constitution is designed to protect the rights of individuals. The Constitution is not a blank check for the government to do whatever it wants. The government must respect the rights of individuals, even when it is acting in the name of national interest.

## 7. Repeated PYQ Model Answer of the Week

“The ‘Right of Reputation’ is acknowledged as an inherent personal right of every person.” Discuss the statement in the light of Law of Defamation in India.

The right of reputation is recognized as an inherent personal right of every person in India. It is a right that is good against all persons in the world and protects one's character, fame or reputation from being injured by false and malicious statements. Defamation is the act of making such statements that harm the reputation of another person. Defamation can be both a civil and a criminal offence in India.

### Defamation and Tort Law

Defamation as a civil offence is governed by the law of torts, which imposes liability on the person who makes the defamatory statement and awards damages to the person who suffers from it. The essential elements of civil defamation are:

1. - The statement must be defamatory, i.e., it must lower the esteem of the person in the eyes of others or expose him to hatred, contempt or ridicule.
2. - The statement must refer to the plaintiff, i.e., it must identify him either expressly or impliedly.
3. - The statement must be published, i.e., it must be communicated to at least one person other than the plaintiff.

### Defamation as a criminal offence

It is codified under sections 499 and 500 of the Indian Penal Code, 1860 (IPC), which prescribe imprisonment or fine or both as punishment for defamation. The essential elements of criminal defamation are:

1. - The statement must be defamatory as defined above.
2. - The statement must refer to the plaintiff as defined above.
3. - The statement must be made with an intention to harm or with knowledge or reason to believe that it will harm the reputation of the plaintiff.
4. - The statement must be made without any lawful justification or excuse.

There are two forms of defamation: libel and slander. Libel is defamation in a permanent and visible form, such as writing, printing, pictures or effigies. Slander is defamation in a transient form, such as spoken words or gestures. Libel is actionable per se, i.e., without proof of actual damage, whereas slander is actionable only on proof of actual damage, except in certain cases where slander is deemed to be

actionable per se, such as imputing unchastity to a woman or accusing a person of having a loathsome disease.

### Defenses in Defamation

The law of defamation in India also recognizes certain defences that can be pleaded by the defendant to escape liability. These are:

- **Truth:** If the defendant can prove that the statement made by him was true and was made for public good, he will not be liable for defamation.

- **Fair comment:** If the defendant can prove that the statement made by him was an expression of opinion on a matter of public interest and was based on true facts, he will not be liable for defamation.

- **Privilege:** If the defendant can prove that the statement made by him was under certain circumstances that gave him immunity from liability, he will not be liable for defamation. Privilege can be absolute or qualified. Absolute privilege applies to statements made in Parliament, courts of justice, etc., whereas qualified privilege applies to statements made in good faith on occasions where there is a duty or interest to make them, such as reports of public proceedings, fair criticism, etc.

### Defamation and Constitution

The law of defamation in India has to be balanced with the right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution of India. The Supreme Court has held that defamation is a reasonable restriction on this right under Article 19(2) as it protects the dignity and reputation of individuals. However, the court has also cautioned that defamation should not be used as a tool to stifle legitimate criticism or dissent.

### Some landmark cases on defamation law in India are:

- **R. Rajagopal v. State of Tamil Nadu (1994):** The Supreme Court held that public officials cannot sue for defamation for any publication relating to their official acts unless they can prove malice.

- **Subramanian Swamy v. Union of India (2016):** The Supreme Court upheld the constitutional validity of sections 499 and 500 of IPC but read down some of its explanations and exceptions to make them compatible with Article 19(1)(a).

Thus, the law of defamation in India aims to protect the right of reputation of every person while also respecting the right to freedom of speech and expression.

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