

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 2nd - 8th July 2023**

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## 1. Review Petition by Former Punjab CM Prakash Singh Badal

The case pertained to an alleged forgery involving the political party's dual constitutions. The decision was made in response to pleas filed by the trio challenging the summons issued against them based on a complaint filed by Balwant Singh Khera, a Hoshiarpur-based social activist and national vice-president of the Socialist Party. The complaint accused them of forgery, cheating, and concealment of facts.

However, a review petition has now been filed before the Supreme Court, contesting the quashing of the cheating case. The petitioner seeks a re-evaluation of the previous decision by the division bench. The review petition aims to reinstate the criminal proceedings against Sukhbir Singh Badal, Parkash Singh Badal, and Daljit Singh Cheema in light of the alleged forgery and related offences.

### Law Relating to Review

The power of the Supreme Court of India to review its own judgments is conferred by Article 137 of the Constitution of India, which states: "Subject to the provisions of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it."

Further, Supreme Court Rules, 2013, under Order XLVII provides the procedural guidelines for the Review Petition. As per Rule 1 of Order XLVII, the Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, rule I of the Code of Civil Procedure, and in a criminal proceeding except on the ground of an error apparent on the face of the record. The application for review shall be accompanied by a certificate of the Advocate on Record certifying that it is the first application for review and is based on the grounds admissible under the Rules.

**Grounds for Review:**

1. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him/her at the time when the decree was passed or order made.
2. Mistake or error apparent on the face of the record.
3. Any other sufficient reason.

The term "any other sufficient reason" has been interpreted by the Supreme Court in *Chajju Ram v. Neki* (AIR 1922 PC 112) to mean sufficiency of a kind analogous to the two already specified, that is to say, to excusable failure to bring to the notice of the Court new and important matters, or error on the face of the record.

**Limitations on the Power of Review:**

1. A review cannot be sought on the ground that the decision was erroneous on merits.
2. Review jurisdiction is not an appellate jurisdiction - it does not allow the court to re-hear the case on merits.
3. The power of review must be exercised with great caution in rare cases when a glaring omission or patent mistake has crept in earlier decision due to judicial fallibility.

## Law Optional Topper's Each year belongs to Us !

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## 2. Senthil Balaji's Arrest - Habeas corpus

After a split verdict, the Supreme Court of India has adjourned the hearing in a series of appeals made by the Enforcement Directorate. These appeals are in response to orders issued by the Madras High Court concerning a habeas corpus petition. The petition was filed to challenge the arrest of Tamil Nadu minister V Senthil Balaji in relation to a cash-for-jobs scam in the state.

**What is Habeas Corpus?**

The Writ of Habeas Corpus is a significant tool in the hands of the courts that safeguards the individual liberty against arbitrary detention. The term "Habeas Corpus" is a Latin term which means "you shall have the body". It is a directive issued by a court to a public official or a person detaining another, commanding him to produce the person detained before the court to examine the legality of the detention.

In India, the provision for the writ of Habeas Corpus is stated in Article 32 and Article 226 of the Constitution.

Article 32: The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Article 226: Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

### **Principles governing the Writ of Habeas Corpus**

Against unlawful detention: The primary purpose of the writ of Habeas Corpus is to ensure freedom against arbitrary and unlawful detention, whether in prison or private custody.

Scope and Availability: A habeas corpus petition can be filed by the person detained or any other person on his/her behalf. Unlike other writs, it can be issued against both public authorities as well as private individuals. It is applicable not only in cases of illegal detentions by the State but also in cases where private individuals are held in custody unlawfully.

Nature of Detention Matters: For a writ of habeas corpus to be issued, it's not sufficient merely to prove detention – it must also be demonstrated that the detention is unlawful or unjustified. If the detention is found to be lawful, then the writ will not be granted.

In conclusion, the Writ of Habeas Corpus serves as a crucial remedy for protection against illegal detention and upholding personal liberty, a cornerstone of any democratic society. It is often described as the most extraordinary writ because it ensures the freedom of an individual by providing an effective and speedy remedy against illegal detention.

## **3. Lowering Age of Consent to 16 in Rape Cases**

The Madhya Pradesh High Court has made a request to the Government of India to consider reducing the age of consent from 18 to 16 in rape cases, as per Section 375 of the Indian Penal Code. The court believes that the current age of consent is causing injustice to adolescent boys and is urging the government to address this issue.

Justice Deepak Kumar Agarwal, presiding over the bench, expressed the opinion that with the widespread use of social media and easy access to the internet, puberty is occurring at an earlier age, often around 14 years old. Consequently, young boys and girls are engaging in physical relationships with each other with mutual consent. The court emphasized that in such cases, the male individuals involved should not be considered criminals, as their actions are a result of age and attraction between adolescents.

The court further observed that the Criminal Law (Amendment) Act of 2013, which increased the age of consent for sexual intercourse by girls from 16 to 18 years, has disturbed the fabric of society. It highlighted that treating boys as criminals due to the age of consent being 18 leads to injustice for adolescent boys.

Prior to the 2013 Amendment Act, sexual intercourse with a girl below 16 was considered rape, regardless of her consent. However, the Amendment Act raised the age of consent to 18, making any sexual intercourse by an adult with a girl below 18 amount to rape, irrespective of consent.

The Madhya Pradesh High Court's appeal to the government reflects its concerns about the impact of the current age of consent on adolescent boys and the perceived injustice they face. By urging a reconsideration of the age of consent, the court aims to address these concerns and promote fairness in cases involving consensual relationships among adolescents.

## 4. Design Defect Under Consumer protection Law

Under the Consumer Protection Act in India, a product is said to have a design defect when there is an inherent flaw in the product's design that makes it unsafe for use or fails to perform its intended function.

A design defect is different from a manufacturing defect, which is a flaw that occurs in the process of making the product. A design defect implies that even when the product is perfectly manufactured, as per its specifications and design, it still poses a risk to the consumer due to its design.

### Legal provisions

The Consumer Protection Act, 2019, introduced the concept of 'Product Liability'. A product manufacturer shall be liable in a product liability action if the product contains a manufacturing defect, is defective in design, or does not conform to express warranty, or fails to contain adequate instructions for correct use to prevent any harm or any warning regarding improper or incorrect usage.

Specifically, under Section 84, a "product manufacturer" shall be liable in a product liability action if:

- (a) the product contains a manufacturing defect or;
- (b) the product is defective in design or;
- (c) there is a deviation from manufacturing specifications or;
- (d) the product does not conform to the express warranty or;
- (e) the product fails to contain adequate instructions for correct use to prevent any harm or any warning regarding improper or incorrect usage.

So, in terms of design defects, if a product's design itself is inherently dangerous or defective, and it causes personal injury or property damage to the consumer, the manufacturer can be held liable under the law. The consumer has to prove that the injury or damage was caused due to the design defect in the product.

To illustrate, if a model of a car is designed with a faulty braking system which poses a risk to the driver even when correctly manufactured according to its design specifications, it would constitute a design defect under the Consumer Protection Act.

Please note, the manufacturer might be able to defend against the claim if they can prove that, at the time when the product was manufactured, the state of scientific or technical knowledge was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control (Section 87).

## 5. Effective control theory: Recognition of Govt and State

The "effective control" theory is a prevalent doctrine in the context of international law and is particularly important in determining the recognition of governments. The theory prioritizes the practical realities of power and control over the territory of a state, rather than focusing on the means by which the governing entity ascended to power or its adherence to democratic principles.

### Principle of the Theory:

This theory posits that a government should be recognized if it has effective control over the state, maintains order, and can ensure the obedience of the population, irrespective of how it acquired power. The emphasis is primarily on the factual control over the state's machinery, and not the manner of its acquisition or the legality of the process.

### Application in Case Law:

The classic example of the application of this theory is the Tinoco Arbitration between Costa Rica and the United Kingdom in 1923. Post a coup d'etat, Federico Tinoco established a new government in Costa Rica. Despite the illegitimate means by which Tinoco came to power, the arbitration held that his government had effective control over the state and should be recognized.

### Critiques and Counterarguments:

Despite its widespread use, the "effective control" theory has been subject to criticism. Critics argue that it has the potential to encourage illegitimate seizures of power by implicitly endorsing governments that ascend to power via coups or other non-democratic means. Furthermore, it has been critiqued for largely ignoring democratic and human rights principles.

Although the "effective control" theory is not without its flaws, it plays a crucial role in the international community due to its pragmatic and realpolitik approach. It values stability and effective control, vital elements in the often turbulent landscape of international politics and law. As such, even with its limitations, it will continue to be a significant principle in the realm of recognition of governments in international law.

## Case of the Week: Donoghue v Stevenson [1932]

### Background:

This case, often referred to as the "Paisley snail" or "snail in the bottle case", is a foundational case in the modern law of negligence in the United Kingdom. It originated in Scotland in 1932.

The plaintiff, May Donoghue, was at a café with a friend. Her friend purchased a bottle of ginger beer, which was served in an opaque bottle, and poured some into a tumbler for Donoghue. After drinking some of the beer, the remaining contents of the bottle were poured into the tumbler, revealing a decomposed snail. Donoghue later fell ill, and she sued the ginger beer manufacturer, David Stevenson.

### Issue:

The primary legal issue in this case was whether a duty of care existed between the defendant (the manufacturer of the product) and the plaintiff (the consumer of the product) in the absence of a contractual relationship.

### Key Decision:

The House of Lords held that Stevenson owed Donoghue a duty of care, stating that a manufacturer of products has a duty of care to their ultimate consumers to ensure there are no defects that could cause



harm. As there was no way for Donoghue to inspect the product (due to its opaque packaging), the responsibility fell upon the manufacturer. Therefore, Donoghue could sue for damages despite having no contractual relationship with the manufacturer.

**Rationale:**

The decision was mainly based on the principle of foreseeability. The manufacturer, Stevenson, should have reasonably foreseen that failure to ensure the product's safety would lead to harm to consumers. As such, he owed a duty of care to the consumer, which was breached when he failed to ensure the product's safety.

Lord Atkin, one of the judges, proposed the "neighbour principle" during this case. According to this principle, people owe a duty of care not to harm those who could be foreseeably affected by their actions – their "neighbours" in a legal sense.

**Impact:**

Donoghue v Stevenson had a profound impact on the law of tort, particularly on the law of negligence. It established the principle of duty of care, which has since been adopted by legal systems around the world, including the United States, Canada, and Australia.

## Repeated Previous year Question

**Q- Discuss the status of individual in International Law especially with reference to human rights treaties.**

Historically, the primary subjects of international law were sovereign states. However, post World War II there has been a significant shift towards acknowledging the role of individuals, especially in the field of human rights. The recognition of individuals as subjects of international law, though limited, has been steadily evolving.

**Universal Declaration of Human Rights and its Impact**

The Universal Declaration of Human Rights (UDHR) adopted by the UN General Assembly in 1948 (A/RES/3/217 A) was revolutionary as it globally asserted and recognized fundamental human rights to be universally protected at the individual level, thus bypassing the state's domestic jurisdiction. Although the UDHR is a declaration and not a treaty, and therefore not legally binding, it was a pivotal moment in the history of international law and the recognition of individual rights.

**Introduction of Binding Human Rights Treaties**

Building on the UDHR, two binding treaties came into being: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. Collectively, these documents along with the UDHR form the International Bill of Human Rights.

**Details of the Covenants**

The ICCPR obligates parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and rights to due process

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and a fair trial, among others (Article 2). Conversely, the ICESCR commits parties to work towards granting economic, social, and cultural rights to individuals.

### **Role of International Criminal Law**

The establishment of the International Criminal Court (ICC) under the Rome Statute (1998) further highlights the shift in recognizing the status of individuals in international law. It shows that individuals can be held internationally accountable for serious crimes such as genocide, crimes against humanity, and war crimes.

### **Challenges and Complexities**

Despite these advancements, complexities persist. The ICC, while able to prosecute individuals, relies on state cooperation for enforcement. The system of human rights protection is also often subject to state consent, in terms of both accepting treaty obligations and implementing decisions from international human rights bodies.

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