

# Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

2nd June - 9th June 2024

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## Striving for a Fully Functional High Seas Biodiversity Treaty

### Grethel Aguilar's Appeal on World Oceans Day 2024

On World Oceans Day 2024, Grethel Aguilar, Director General of the International Union for Conservation of Nature (IUCN), made a compelling appeal for global action to protect the high seas. She urged countries worldwide to work towards a fully functional High Seas Biodiversity Treaty, emphasising the need for robust international regulation of almost half of the planet's surface.

"All signing nations should be supported in the ratification process to bring this treaty into force, moving almost half of the planet's surface into better regulation through international law," Aguilar stated in a message released by the IUCN.

### Need for Increased Ratification

Aguilar highlighted the critical necessity for more countries to ratify the global agreement addressing unsustainable fisheries practices and subsidies. The current situation, where only seven countries have ratified the treaty, starkly contrasts with the 90 countries that have signed it. The treaty requires ratification by at least 60 countries to become international law. Among the notable non-signatories and non-ratifiers is India, a significant player in global maritime affairs.

"We must also continue to make the scientific, legal, and moral case for a moratorium on deep-sea mining," Aguilar added, stressing the potential risks that such activities pose to the fragile marine ecosystems.

### Importance of the High Seas

The high seas, which lie beyond national jurisdictions, cover a substantial portion of the world's oceans and host a rich variety of biodiversity. Despite their ecological importance, less than two per

cent of these areas are protected by law. Last year, the United Nations adopted the High Seas Treaty, formally known as the Agreement on Biodiversity Beyond National Jurisdiction (BBNJ). The treaty aims to fill significant gaps in the United Nations Convention on the Law of the Sea (UNCLOS) by addressing the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction.

### **Broader Context of Biodiversity Protection**

The call to action is rooted in the broader movement towards recognizing and protecting biological diversity. While the Convention on Biological Diversity (CBD) adopted in 1992 focuses on conserving biological diversity, the sustainable use of its components, and fair benefit-sharing from genetic resources, it does not cover biodiversity in areas beyond national jurisdiction. This gap has become increasingly problematic as human activities in the ocean have intensified, necessitating comprehensive international legal frameworks like the High Seas Treaty.

UNCLOS, although foundational, does not explicitly address biodiversity, leading to ongoing debates about the management of marine genetic resources. The treaty includes obligations for states to protect and preserve the marine environment, but these provisions have proven inadequate in the face of growing environmental pressures.

### **Principles of Natural Justice in DTC Case**

In **Delhi Transport Corporation Vs Ram Avatar Sharma**, Delhi High Court, through a single judge bench comprising Justice Chandra Dhari Singh, held that the denial of representation by a defence assistant and the non-enclosure of past records in a chargesheet constitute a violation of the principles of natural justice.

### **Case History**

Ram Avatar Sharma, the respondent, joined the Delhi Transport Corporation (DTC) in 1984. He was issued a chargesheet for allegedly not issuing a ticket despite collecting the fare from passengers. The matter was referred to an Enquiry Officer, whose report led the Disciplinary Authority to issue a Show Cause Notice, eventually terminating Sharma's services. Sharma contested this termination, leading to the case being referred to the Industrial Tribunal by the Appropriate Government. In 2009, the Tribunal found the inquiry flawed due to violations of natural justice and ordered Sharma's reinstatement without back wages, prompting DTC to file a writ petition.

### **Petitioner's Contentions**

DTC argued that the Tribunal erroneously concluded that the enquiry proceedings were in violation of natural justice principles. They contended that the Enquiry Officer's findings, based on all relevant documents, were legitimate. Furthermore, DTC challenged the Tribunal's position that the non-attachment of past records to the chargesheet undermined its authenticity and argued that the principle of benefit of doubt should not apply to departmental proceedings.

## Respondent's Arguments

Sharma's defence highlighted that the Enquiry Officer did not provide necessary documents considered during the inquiry, preventing a fair defence. Additionally, Sharma was denied the opportunity to be represented by a defence assistant, which further breached the principles of natural justice.

## Court's Findings

The court observed that the Tribunal noted the respondent was not informed of his entitlement to a defence assistant, denying him the chance to properly present his case. The Tribunal also found that Sharma was denied access to the "log book," which was crucial for his defence. These factors led the Tribunal to conclude that the inquiry was conducted in violation of natural justice.

Justice Chandra Dhari Singh concurred with the Tribunal's findings, stating:

"This Court is of the view that non-supply of the log book and absence of proper documents to prove the fact that the petitioner was allowed to inspect the documents considered during the inquiry proceedings, vitiated the enquiry proceedings. Moreover, the factum that the respondent was not allowed to be represented by the defence assistant as well as the past record was not enclosed with the chargesheet, establishes that the enquiry proceedings were conducted in violation of the principles of natural justice."

The court concluded that DTC failed to establish any misconduct by Sharma, thus entitling him to reinstatement. Consequently, the writ petition was dismissed.

## A Just Transition for the Global Plastics Treaty

According to the OECD Global Plastic Outlook, global production of plastic waste was 353 million tonnes in 2019, more than double since 2000, and is projected to triple by 2060. Despite these staggering numbers, only 9% of plastic waste was recycled, with the majority being sent to landfills, incinerated, or disposed of in uncontrolled sites. The United Nations Environment Programme reports that 85% of the recycled plastic is processed by informal recycling workers.

These workers, who collect, sort, and recover recyclable materials from general waste, play a crucial role in alleviating municipal budgets and promoting circular waste management solutions. Their efforts significantly reduce plastic content in landfills and prevent it from leaking into the environment. Despite their invaluable contributions, these workers often remain marginalised and vulnerable within the plastic value chains.

## Vulnerability of Informal Recycling Workers

Informal recycling workers face numerous challenges, including the increasing privatisation of waste management, waste-to-energy projects, and exclusion from public policy interventions such as Extended Producer Responsibility (EPR) norms. The informal waste and recovery sector (IWRS) is a significant player in global municipal solid waste management, accounting for 80% of

municipal solid waste recovery in many cities, according to UN-Habitat's Waste Wise Cities Tool (WaCT). However, strategies to reduce plastic pollution often neglect to effectively involve the IWRS, worsening livelihood vulnerabilities and undermining existing informal recovery systems.

### **Global Plastics Treaty: Aiming for a Just Transition**

The Global Plastics Treaty is a landmark effort to establish a legally binding agreement aimed at reducing and eliminating plastic pollution. The Intergovernmental Negotiating Committee (INC) was formed following a decision at the fifth UN Environment Assembly in Nairobi in early 2021. Subsequent meetings in Uruguay, Paris, and Nairobi, and the fourth INC-4 in Canada, have seen active participation from the International Alliance of Waste Pickers (IAWP).

The IAWP has been vocal about the need to support the formalisation and integration of informal waste pickers into discussions on addressing plastics. They advocate for including waste pickers' perspectives and solutions at every stage of policy and law implementation. These measures aim to acknowledge waste pickers' historical contributions, protect their rights, and promote effective and sustainable plastic waste management practices. Clarifying definitions for a just transition and the informal waste sector workforce is crucial to ensure their inclusion and protection.

### **India's Role**

As a key representative from the Global South, India promotes an approach that enhances repair, reuse, refill, and recycling without necessarily eliminating the use of plastics. India's informal waste pickers, who are indispensable, remain central to this discussion. It is imperative to rethink the formulation of EPR norms and integrate this informal workforce into the new legal framework.

As the final round of negotiations for the Global Plastics Treaty approaches, a crucial question remains: how can a global instrument to end plastic pollution enable a just transition for the nearly 15 million people who informally collect and recover up to 58% of global recycled waste? By incorporating their perspectives and ensuring their livelihoods are protected, the treaty can embody social justice and equity principles while leaving no one and no place behind.

### **Fair Compensation and Property Rights**

The right to property, initially a fundamental right and later a constitutional right, has been a contentious issue in India's legal history. The recent decision in the Kolkata Municipal Corporation case by the Supreme Court highlights the ongoing evolution and the critical importance of fair compensation for property acquisition.

### **Historical Context**

The right to property has witnessed a dynamic history post-independence, marked by significant amendments and judicial interpretations. The genesis of the power struggle between the legislature and the judiciary over property rights can be traced back to the Bela Banerjee case. Here, the Supreme Court interpreted Article 31(2) to mean that compensation must be a "just equivalent" of the property acquired. This interpretation was countered by the Constitution (Fourth) Amendment in 1955, which sought to prevent judicial review of compensation adequacy.

In response, the judiciary devised a mechanism to scrutinise the principles used for determining compensation, keeping the debate alive. The Constitution (Twenty-Fifth) Amendment Act, 1971, replaced "compensation" with "amount," aiming to limit judicial interference. Despite this, the Kesavananda Bharati case upheld the amendment but allowed scrutiny of the principles for determining the "amount."

### **Shifts in Legislative and Judicial Approaches**

The right to property underwent a significant change following the 1977 general elections when the Janata Party came to power. The Constitution (44th Amendment) Act, 1978, removed the right to property from the list of fundamental rights and repositioned it as a constitutional right under Article 300-A. This amendment also deleted Article 31, which had been central to the compensation debate.

Justice K.K. Mathew, in his dissent in Kesavananda Bharati, emphasised the intrinsic link between property ownership and civilizational quality. He argued against excluding the right to own property from the basic structure of the Constitution. This perspective was echoed by Professor P.K. Tripathi, who criticised the deletion of Article 31, arguing that compensation should inherently be part of property acquisition for public purposes.

### **Supreme Court's Role**

In subsequent years, the Supreme Court has consistently held that the right to property, though not a fundamental right, remains a constitutional and human right. The M.C. Mehta case reinforced that laws depriving a person of their property must meet the standards of fairness, reasonableness, and justice as per Articles 14, 19, and 21. The B.K. Ravichandra case further solidified this stance, indicating that Article 300-A's guarantee of property rights is robust and cannot be diminished.

### **Kolkata Municipal Corporation Decision**

The Supreme Court's recent decision in the Kolkata Municipal Corporation case has further clarified the facets protected under Article 300-A. These include the right to notice, the right to be heard, the right to a reasoned decision, the duty to acquire only for public purpose, the right of restitution or fair compensation, the right to an efficient and expeditious process, and the right of conclusion.

The court concluded that the absence of any of these features makes the law susceptible to challenge. This decision reinstates the principle that compensation for property acquisition must be just and reasonable, akin to the position held during the era of Article 31 as interpreted in Bela Banerjee. The court affirmed that deprivation of property rights is permissible only upon restitution, whether in monetary terms or through rehabilitation.

### **Court Grants Injunction to Protect 'Jaipuria' Trademarks**

In **Jaipuria Edutech Foundation vs. Shyamlalbabu Educational Trust**, Delhi High Court has restrained the defendant, Shyamlal Babu Educational Trust, and all those acting on their behalf, from using the plaintiffs' trademarks, including 'Jaipuria International Schools' and 'Seth M.R. Jaipuria School,' as well as any deceptively similar device marks in respect of educational services.

The decision aims to prevent further infringement and protect the established reputation and goodwill of the Jaipuria Group in the education sector.

### **Prima Facie Case for Injunction**

Justice Anish Dayal, presiding over the case, observed that the plaintiff had established a prima facie case for an ex parte ad interim injunction until the next hearing. The court noted that the balance of convenience favoured the plaintiff, who would likely suffer irreparable harm if the injunction was not granted.

### **Background of the Dispute**

The plaintiffs, part of the Jaipuria Group, have been involved in educational establishments and own the intellectual property rights to the brand names 'Seth M.R. Jaipuria School' and 'Jaipuria International Schools.' They secured registrations for these trademarks in 2013, 2014, and 2016, respectively. In 2022, a franchise agreement was executed with the defendant trust to set up a school in Muzaffarpur, Bihar, granting them the licence to use Jaipuria intellectual property. However, due to breaches and the failure to set up the school building, the agreement was terminated.

Despite termination and a cease-and-desist notice, the defendant continued using the Jaipuria trademarks. In 2024, it was discovered that the school had relocated and was operating under the name 'Jaipuria International School,' using 'Seth M.R. Jaipuria' labels, prompting the plaintiffs to seek legal recourse.

### **Plaintiffs' Contentions**

Counsel for the Jaipuria Group, including Rohit Sharma, Jatin Lalwani, and Nikhil Purohit, argued that the defendant's actions constituted ongoing infringement. They highlighted the Jaipuria Group's longstanding reputation and goodwill built over 80 years in educational services and the significant prejudice caused by the defendant's unauthorised use of their trademarks.

### **Court's Directives**

Acknowledging the plaintiff's prima facie case, the court directed the defendant to remove the 'Jaipuria' mark from its name and premises and submit a compliance report by July 15, 2024. To minimise disruption, the injunction will take effect from that date, giving the defendant time to comply. The court also ordered compliance under Order XXXIX Rule 3, CPC within a week and scheduled the next hearing for September 11, 2024.

## **Case of the Week: Coal India Ltd & Anr. v. Competition Commission of India**

### **Facts of the Case**

Coal India Limited (CIL), along with its subsidiary Western Coalfields Limited, was alleged to have abused its dominant position in the coal market. The Competition Commission of India (CCI) found that CIL had engaged in practices that violated the Competition Act, 2002. The CCI's findings were affirmed by the Competition Appellate Tribunal. CIL challenged these findings in the Supreme Court, arguing that as a statutory monopoly created under the Coal Mines (Nationalisation) Act,

1973, and geared to achieve the objectives of Article 39(b) of the Constitution of India, it should not be bound by the provisions of the Competition Act, 2002.

### Issues

1. Whether the Competition Act, 2002, applies to Coal India Limited and its subsidiaries, given their status as statutory monopolies created to serve the common good as per Article 39(b) of the Constitution.
2. Whether the actions and policies of Coal India Limited, directed by statutory mandates and Presidential directives, can be scrutinised under the Competition Act, 2002.

### Judgement

The Supreme Court upheld the applicability of the Competition Act, 2002, to Coal India Limited and its subsidiaries. The Court found no inconsistency between the objectives of the Nationalisation Act and the Competition Act. It emphasised the necessity for even statutory monopolies to operate within the competitive framework to ensure efficiency and consumer welfare. The Court dismissed the appeal, affirming the orders of the CCI and the Competition Appellate Tribunal.

### Repeated PYQ

**Q. "Section 34 is incorporated in the Indian penal Code to deal with the cases where it is very difficult to distinguish precisely the part taken by each individual in a criminal act." While examining the rationality of this Section, support the answer with the help of decided cases.**

**Ans.** Section 34 of the Indian Penal Code (IPC) addresses the principle of joint liability in criminal acts. This provision ensures that when a crime is committed by several individuals in furtherance of a common intention, each participant is held equally liable as if they had committed the act alone. This principle rejects the notion that culpability diminishes with the number of perpetrators, emphasising that the gravity of the crime remains unchanged irrespective of the number of participants involved.

### Rationale Behind Section 34

The fundamental rationale behind Section 34 lies in its ability to address the complexities of distinguishing the exact role played by each individual in a criminal act. This provision ensures that the intended punishment set by the law is not undermined by the difficulty in pinpointing individual actions. Section 34 exemplifies constructive criminality, where all individuals involved are held liable for the actions of one or some of them. This concept is crucial in maintaining the integrity of legal accountability and deterring group criminal activities.

### Essential Ingredients of Section 34

Section 34 requires two essential elements for its application: common intention and participation. Common intention implies a prearranged plan or prior agreement among the participants, where each individual's intention is known and shared by all others. This shared intention must precede the act constituting the offence. Participation involves taking part in the criminal act, either actively

or passively, in furtherance of the common intention. Both elements must be present for Section 34 to apply, making common intention the mens rea necessary to constitute the offence.

### **Common Intention**

Common intention involves a shared purpose that connects all participants in a criminal act. This shared purpose distinguishes common intention from similar intention, where individuals may have the same or similar intentions without a prearranged plan. Common intention can develop spontaneously, even on the spur of the moment, provided it precedes the act constituting the offence. The presence of compelling evidence is crucial to establish the vicarious liability of all accused individuals.

### **Evidence for Common Intention**

Determining common intention is a factual inquiry based on the surrounding circumstances. The term "common intention" varies depending on the case, and inferences about it should stem from the collective behaviour of all involved parties. Mere presence at the crime scene is insufficient to establish common intention without compelling evidence of participation. Intention is often inferred from actions, conduct, or other pertinent circumstances, making it necessary to analyse the collective behaviour to determine common intention.

### **Participation**

Participation entails taking part in an activity that contributes to a common objective. This involvement can be active or passive, such as standing guard or waiting in a nearby car. Section 34 emphasises active involvement in the actual execution of the act rather than merely in its planning. The Supreme Court has clarified that physical presence may not always be a prerequisite for participation, particularly in cases where the offence spans diverse acts across various times and places.

### **Leading Case Laws**

#### **Mahbub Shah v Emperor**

In the case of Mahbub Shah v Emperor [(1945) 47 BOM. LR 941], A and B were prosecuted for murder under Sections 302 read with 34 IPC. A scuffle led to A and B intervening with guns, resulting in A shooting C dead while B injured D. The High Court found them guilty, but the Privy Council overturned the conviction, emphasising the lack of a premeditated plan to kill C. This case highlighted the necessity of a common intention, implying a prearranged plan, for Section 34 to apply.

#### **Tukaram v State of Maharashtra**

In Tukaram v State of Maharashtra (AIR 1979 SC 185), the appellant was held guilty under Section 34 despite not being present at the crime scene. He was at a weighbridge while the crime was committed. The court stressed that participation in the crime does not always require physical presence; even remote direction or assistance can constitute participation. This interpretation, however, was noted to potentially blur the simultaneous action envisioned by Section 35, emphasising the need for physical presence coupled with active participation at the crime scene.