

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date: 22nd - 28th April 2024

1. Supreme Court Elucidates Eggshell Skull Rule.....	1
2. Supreme Court Rejects Pleas for 100% EVM-VVPAT Verification.....	2
3. Insurance Justice: Victory for the Injured.....	2
4. Permanent Injunction in Heifer Project Trademark Dispute.....	3
5. Timely Objections Vital in Arbitration Matters.....	4
6. Case of the Week: Bosnia and Herzegovina v Serbia and Montenegro.....	5
7. Repeated PYQ.....	5

1. Supreme Court Elucidates Eggshell Skull Rule

(Relevant Topic: Tort, Consumer Protection)

In **JYOTI DEVI v. SUKET HOSPITAL & ORS.** the Supreme Court made an important decision regarding compensation for medical negligence, significantly increasing the amount owed to a patient from Rs. 2 Lakhs to Rs. 5 Lakhs. The case revolved around a patient who endured persistent post-surgery suffering due to deficient service by the doctor.

The patient underwent surgery but continued to experience pain near the surgical site post-operation. Despite assurances from the hospital, her condition did not improve. Later, it was discovered that a 2.5 cm needle had been left near the surgical site, necessitating immediate removal at another medical facility.

Initially awarded Rs. 5 Lakhs by the District Forum, the compensation amount was unjustly reduced to Rs. 1 Lakh by the State Consumer Dispute Redressal Commission, and later increased to Rs. 2 Lakhs by the National Consumer Dispute Redressal Commission (NCDRC). Dissatisfied with this decision, the patient appealed to the Supreme Court.

Eggshell Skull Rule

The Supreme Court scrutinised the reasoning behind the compensation reduction, particularly the application of the **Eggshell Skull Rule**. This legal doctrine holds the injurer liable for unforeseeable damages. However, the court stressed that for this rule to apply, the patient must have had a pre-existing condition falling into specific categories.

Court's Ruling

The court found no discussion on the patient's pre-existing condition or how it warranted the application of the Eggshell Skull Rule. Consequently, it set aside the previous rulings and restored the compensation amount to Rs. 5 Lakhs, emphasising the hospital's negligence and deficient service.

2. Supreme Court Rejects Pleas for 100% EVM-VVPAT Verification (Relevant Topic: Constitutional Law)

In **Association of Democratic Reforms v. Election Commission of India & Anr.**, the Supreme Court dismissed pleas demanding complete cross-verification of Electronic Voting Machines (EVMs) with Voter Verifiable Paper Audit Trail (VVPAT) records. The decision, delivered by Justices Sanjiv Khanna and Dipankar Datta, comes after technical clarifications were sought from the Election Commission.

While rejecting pleas to revert to paper ballot voting and mandating full EVM-VVPAT verification, the Court issued two crucial directives:

1. **Sealing and Storage Protocol:** After symbol loading in VVPATs, Symbol Loading Units (SLUs) will be sealed and secured in containers. These sealed containers, along with EVMs, will be stored for a minimum of 45 days post-results declaration.
2. **Post-Election Verification:** 5% of EVMs per assembly constituency will undergo scrutiny for tampering or modification of post-results, based on written requests by specific candidates. Verification will be overseen by engineers from EVM manufacturers, with expenses borne by the requesting candidates.

The bench recommended exploring electronic counting of VVPAT paper slips and introducing bar codes for party identification on ballots. Justice Datta emphasised the importance of a balanced and evidence-based approach, cautioning against blind distrust that could hinder progress.

Background

The petitions, filed by various parties, aimed to ensure every vote is accurately recorded and counted. However, the Election Commission opposed these requests, citing logistical challenges and asserting the integrity of EVMs and VVPATs.

3. Insurance Justice: Victory for the Injured Relevant Topic: Contract, Consumer Protection

In **Sh. Manoj Kumar Pant vs General Manager/Regional Manager, Birla Sun Life Insurance Company Limited**, the State Consumer Disputes Redressal Commission, Uttarakhand bench, headed by Ms. Kumkum Rani (President) and Mr. B.S. Manral (Member), held Birla Sun Life Insurance Company accountable for denying a legitimate claim based on an unreasonable policy clause. The company was ordered to reimburse the claim amount of Rs. 6,23,896/- with interest and pay Rs. 5,000 for litigation costs to the Complainant.

Mr. Manoj Kumar Pant, the Complainant, had purchased an insurance policy from Birla Sun Life Insurance Co. Ltd. with assurances of comprehensive coverage. However, when he suffered severe injuries in a motorcycle accident, the Insurance Company rejected his claim, citing a clause excluding coverage for injuries within 90 days of policy issuance.

“During a journey from Nainital to Kaladhungi, Mr. Pant's motorcycle collided with a Pickup vehicle due to the negligent driving of the latter's driver, resulting in severe injuries. Despite incurring substantial medical expenses during his hospitalisation, the Insurance Company refused to honour the claim.”

The Complainant, feeling aggrieved, filed a complaint which was initially dismissed by the District Consumer Disputes Redressal Commission. However, upon appeal to the State Commission, a different verdict was reached.

Commission's Decision

The State Commission recognized the flaws in the Insurance Company's argument, emphasizing the purpose of insurance to cover unforeseen events. Consequently, it ruled in favour of Mr. Pant, directing the Insurance Company to pay the claim amount along with interest and litigation costs.

4. Permanent Injunction in Heifer Project Trademark Dispute

Relevant Topic: Infringement of Trademark

The Delhi High Court has delivered a significant ruling in favour of Heifer Project International, in **Heifer Project International v. Heifer Project India Trust**, issuing a permanent injunction in a trademark infringement dispute against Heifer Project India Trust.

Presiding over the case, Justice Sanjeev Narula emphasised the clear instance of 'triple identity' between the disputed trademarks, operational areas, and target demographics. He highlighted the likelihood of deception and confusion among the general public due to the nearly identical marks used by the Defendants.

“Justice Narula highlighted the infringement of Heifer Project International's trademark, trade name, and corporate identity by the Defendants. He deemed their actions a violation of established legal rights governing trademark usage, particularly after the withdrawal of prior authorization.”

Heifer Project International initiated legal action against Heifer Project India Trust and Late Mr. Pran K Bhatt, Managing Trustee of the Defendant Trust. The Plaintiff had adopted the term "Heifer" in 1953 for its corporate identity and activities, utilising it continuously and uninterruptedly. They further developed trademarks associated with their activities, including "Heifer International" and "Heifer Project."

At the initiation of the suit, all relevant trademarks were registered with the United States Patent & Trademark Office. The Plaintiff also secured registrations with the Indian Trademark Office during the legal proceedings.

The Plaintiff alleged that Defendant No. 2, formerly associated with the Plaintiff, deviated from contractual obligations, leading to the termination of their relationship. Despite clear instructions to cease using Plaintiff's marks, the Defendants continued to do so.

The Court directed the Defendants to surrender all materials bearing the disputed trademarks and to recall products and promotional materials featuring these marks. Additionally, nominal damages of Rs. 3,00,000 were awarded to the Plaintiff.

5. Timely Objections Vital in Arbitration Matters

Relevant Topic: Arbitration and Conciliation Act

In **M/s Colorhome Developers Pvt Ltd v. M/s Color Castle Owners Society**, the High Court of Madras reinforced the principle that objections concerning the jurisdiction or validity of arbitrator appointments must be raised during arbitral proceedings.

“The bench of Justices R. Subramanian and R. Sakhivel emphasised that failure to raise such objections in due time precludes their consideration on appeal.”

The dispute in question was referred to arbitration by court order dated 17.09.2019, despite objections from the appellant regarding the validity of the arbitration invocation by the Secretary of a Housing Society, the respondent. The arbitrator subsequently ruled in favour of the respondent, leading to the appellant's challenge of the award before the Single Bench.

The Single Bench dismissed the challenge petition, prompting the appellant to file an appeal under Section 37 of the Arbitration and Conciliation Act (A&C Act).

Grounds of Appeal

The appellant contested the award on two primary grounds:

1. The invalidity of arbitration invocation by the housing society's secretary.
2. The absence of an arbitration agreement between the parties, rendering the proceedings and the resultant award void.

Court's Analysis

The Court addressed each ground of appeal systematically. Firstly, it noted that objections regarding the validity of arbitration invocation had already been adjudicated by the Appointing Court during the arbitrator's appointment. It emphasised that such objections, once dismissed by the Court under Section 11, cannot be re-raised in appeal.

Subsequently, the Court examined the issue of the alleged absence of an arbitration agreement. It observed that this objection had not been raised before the arbitrator or the Single Bench under

Section 34. Citing Section 16(2) of the A&C Act, the Court stressed the importance of timely objection to jurisdiction.

Consequently, the Court dismissed the appeal, affirming that objections related to jurisdiction or arbitrator appointment must be raised during arbitral proceedings. Failing to do so prevents their consideration on appeal, ensuring procedural integrity and efficiency in arbitration disputes.

6. Case of the Week: Bosnia and Herzegovina v Serbia and Montenegro

In the case of Bosnia and Herzegovina v Serbia and Montenegro, the International Court of Justice (ICJ) faced the question of whether the actions of the Bosnian Serb troops, under the command of General Mladić forming the army of the Republika Srpska (VRS), and various paramilitary Serb groups, particularly in relation to the massacre at Srebrenica and other atrocities within Bosnia and Herzegovina, could be attributed to the Federal Republic of Yugoslavia (FRY), later known as Serbia and Montenegro.

The Court inquired into two distinct aspects. Firstly, it sought to determine whether the acts committed at Srebrenica were executed by organs of the Respondent, implying individuals or entities whose conduct is inherently attributable to the Respondent state. Secondly, if the first question yielded a negative response, the Court aimed to ascertain whether the acts were carried out by individuals who, while not organs of the Respondent, acted under its instructions, direction, or control.

In addressing the first aspect, the Court emphasised the **fundamental principle of state responsibility**, stipulating that the conduct of any state organ constitutes an act of the state under international law and hence triggers the state's responsibility if it violates an international obligation. However, upon examination of the evidence, the Court concluded that the acts of genocide in Srebrenica were not perpetrated by entities possessing the status of organs of the FRY under its internal law. There was a lack of evidence demonstrating direct involvement of the FRY army or political leaders in planning or executing the massacres. Although the FRY army had participated in military operations in Bosnia and Herzegovina prior to the events at Srebrenica, such involvement was not shown in relation to the massacres.

Moreover, the Court scrutinised the status of individuals like General Mladić and other officers within the context of the FRY's internal law. It was established that these officers were not de jure organs of the FRY. Even if they were officers of the FRY, their status alone did not mandate their treatment as organs of the state for the purposes of state responsibility. While the FRY provided substantial support to the Republika Srpska, including financial aid and payment of salaries to VRS officers, this did not automatically confer organ status upon them. These officers were appointed by the President of the Republika Srpska and were subordinated to its political leadership. Therefore, their actions were attributed to the Republika Srpska or the VRS, not to the FRY.

Court determined that the actions in question were not attributable to the FRY. Despite its support for the Republika Srpska, the specific acts of genocide at Srebrenica were not directly linked to the FRY's organs or individuals acting on its behalf.

7. Repeated PYQ

Q. Critically examine the widening dimensions of the concept of State in Article 12 of the Constitution of India.

Ans. Article 12 of the Indian Constitution serves as an important definition within the legal framework of the nation. It elucidates the scope and reach of the term "the State" as it pertains to the fundamental rights and directive principles enshrined in the Constitution.

Expanding the Definition of 'State'

The constitutional interpretation of 'the State' under Article 12 has evolved significantly over time, with courts offering significant perspectives to accommodate the changing socio-political landscape of India. Through landmark cases such as **Rajasthan State Electricity Board v. Mohanlal** and **Ramana Dayaram Shetty v. The International Airport**, the judiciary has widened the ambit of 'other authorities' to include entities performing governmental or quasi-governmental functions.

Judicial Scrutiny and Criteria

The judiciary, through its deliberations, has laid down various criteria to determine whether an entity qualifies as 'the State' under Article 12. Principles such as ownership by the government, substantial government expenditure, state-conferred monopolies, pervasive government control, public importance of functions, and governmental department transfers to corporations have been instrumental in delineating the contours of statehood.

Incorporating Eiusdem Generis

The principle of *eiusdem generis*, as propounded in **University of Madras v. Santa Bai**, underline the inclusion of authorities akin to governmental bodies within the purview of 'other authorities.' This principle aligns with the overarching objective of ensuring that entities performing sovereign functions are subject to constitutional scrutiny and accountability.

Judiciary: State or Not?

Debates surrounding the judiciary's classification as 'the State' have sparked scholarly discourse and legal deliberation. While eminent jurists like **H.M. Seervai** and **V.N. Shukla** advocate for considering the judiciary as part of the state apparatus, divergent opinions exist, as evidenced by rulings in **Rati Lal v. State of Bombay** and **A.R. Antulay v. R.S. Nayak**. The dichotomy between rule-making powers and exercise of judicial functions further complicates this discourse.

Application to Educational Institutions

The application of Article 12 to educational institutions has been a subject of considerable judicial scrutiny. While unaided minority schools may not fall under the ambit of 'the State,' recent judgments have emphasised the public functions performed by private educational entities. Cases such as **Satimbla Sharma v. St. Paul's Senior Sec. School** and **Ramesh Ahluwalia v. State of**

Punjab stress on the judiciary's role in ensuring accountability and equitable treatment within the education sector.

Expanding Jurisdiction through Art. 32 and 226

The judiciary's expansive interpretation of Articles 32 and 226 has facilitated increased oversight over entities performing public functions, including educational institutions. By recognizing the public nature of educational endeavours and the consequent need for judicial intervention, courts have extended their jurisdiction to ensure adherence to constitutional principles and safeguard citizens' rights.

Challenges and Critiques

Despite the judiciary's proactive stance in upholding constitutional values, challenges persist regarding the delineation of statehood and the application of Article 12. The criteria for determining 'other authorities' and the extent of judicial intervention remain contentious issues, necessitating a balance between accountability and institutional autonomy.

