

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

17th Feb - 26th Feb 2025

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**FOUNDATION BATCH
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1) Commercial borrowers are not consumers under Consumer Protection Act, 1986.

In a recent judgment, the Supreme Court of India reaffirmed that borrowers who take loans for profit-generating activities do not qualify as "consumers" under Section 2(1)(d)(ii) of the **Consumer Protection Act, 1986**. The Court held that a loan transaction undertaken for a **commercial purpose** falls outside the purview of the Act, making complaints in such cases **non-maintainable** before consumer forums.

The ruling came in the case of *The Chief Manager Central Bank of India v. Ad Bureau Advertising Pvt Limited*, where the **Central Bank of India** had sanctioned a ₹10 crore loan to Ad Bureau for the **post-production of the Rajinikanth film Kochadaiyan**. The loan eventually became irregular, leading to a **One-Time Settlement (OTS)** for ₹3.56 crore.

Despite the settlement, the bank allegedly **reported Ad Bureau as a defaulter to CIBIL**, causing reputational and business loss. Ad Bureau then filed a consumer complaint before the National Consumer Disputes Redressal Commission (NCDRC), which ruled in its favor and directed the bank to pay **₹75 lakh as compensation**.

However, on appeal, the Supreme Court set aside the NCDRC's order, emphasizing that the **"dominant purpose"** of the loan was to generate profits, making it a **business-to-business transaction for a commercial purpose**. It rejected Ad Bureau's claim that the loan was taken for self-branding, stating that **brand-building is ultimately aimed at attracting customers and increasing revenue**, which still qualifies as a commercial activity.

Legal Principle

- If a loan or credit facility is obtained **for business or profit-making**, the borrower **cannot claim consumer protection** under the Consumer Protection Act.
- The **dominant purpose** test is essential to determine whether a transaction is commercial in nature.

2) Arbitration Agreement Enforceable Against Legal Representatives of Deceased Partner.

The Supreme Court of India recently in *Rahul Verma and others vs Rampat Lal Verma and others*, reaffirmed that an **arbitration agreement remains enforceable against the legal representatives** of a deceased partner in a partnership firm. This decision was made in *Rahul Verma and Others v. Rampat Lal Verma and Others*, where the Court rejected the argument that arbitration clauses do not apply to non-signatories.

The Court relied on its previous ruling in *Ravi Prakash Goel v. Chandra Prakash Goel & Anr.* [(2008) 13 SCC 667], stating that the **death of a party does not terminate an arbitration agreement**. The Court also referenced *Jyoti Gupta v. Kewalsons & Ors.* [2018 SCC OnLine Del 7942], where the **Delhi High Court upheld the enforceability of arbitration clauses against legal heirs** of a deceased partner.

Application of Section 40

The Court emphasized that **Section 40 of the Arbitration and Conciliation Act, 1996** allows the arbitration process to continue despite a party's death. Legal heirs, as representatives of the deceased partner, are **both entitled to enforce and bound by the arbitration agreement**.

3) Supreme Court's Interim Protection to YouTuber Ranveer Allahabadi

The Supreme Court of India, on **February 18**, granted **interim protection from arrest** to YouTuber **Ranveer Allahabadi (Beer Biceps)** in connection with **multiple FIRs** registered against him in **Mumbai, Guwahati, and Jaipur** for alleged **obscenity** in an episode of the show *India's Got Latent*. The Court's order is significant in the context of **Article 19(1)(a)** of the Indian Constitution, which guarantees the fundamental right to **freedom of speech and expression**.

A bench comprising Justices Surya Kant and N Kotiswar Singh issued a notice to the Union of India, State of Maharashtra, and State of Assam, while granting protection from further FIRs on the same issue. The Court imposed conditions on Allahabadi, including **cooperation with the investigation, surrender of his passport, and a temporary ban on airing new shows**. The **restriction on his media content raises concerns** regarding the balance between **free speech and reasonable restrictions**.

Article 19(1)(a) and Reasonable Restrictions

Under **Article 19(1)(a)** of the **Constitution of India**, individuals have the right to **freedom of speech and expression**, which includes media and digital content creation. However, this right is subject to **reasonable restrictions** under **Article 19(2)**, which allows limitations on grounds such as **public order, morality, decency, and defamation**. The allegations against Allahabadi pertain to **obscenity**, a recognized ground under **Article 19(2)**.

4). International Sea Authority

The International Seabed Authority (ISA) is an autonomous international organization established under the United Nations Convention on the Law of the Sea (UNCLOS). It was created to manage and regulate mineral-related activities in the international seabed area (often referred to as "the Area"), beyond national jurisdictions, to ensure the equitable and environmentally responsible use of ocean resources.

Establishment

The ISA was formally established in 1994 following the adoption of the 1982 UNCLOS, also known as the Constitution for the Oceans. The UNCLOS sets out the legal framework for marine and seabed activities, and the ISA is the central institution tasked with implementing its provisions concerning the seabed. The headquarters of the ISA is located in Kingston, Jamaica.

Key Functions and Mandate

The ISA's mandate is twofold:

Regulation and Control of Mineral Resources:

- The ISA has exclusive authority over seabed mining in the international seabed area, beyond national jurisdictions. This area contains vast deposits of polymetallic nodules, cobalt-rich ferromanganese crusts, and polymetallic sulphides, which are seen as valuable sources of minerals such as nickel, cobalt, copper, and manganese.
- The ISA issues exploration and exploitation licenses to states and private entities, ensuring that these activities are conducted under strict environmental safeguards and are managed for the benefit of all mankind.

Protection of the Marine Environment:

- The ISA is responsible for protecting the marine environment from the potential adverse effects of deep-sea mining activities. This includes ensuring that mining does not cause harm to marine ecosystems and that states comply with environmental standards.
- The Authority has developed guidelines for environmental impact assessments and requires contractors to submit environmental management plans for their operations.

Structure and Governance

The ISA operates through a multilateral framework and has several organs responsible for carrying out its functions:

1. **The Assembly:** The Assembly is the supreme organ of the ISA, comprising all the member states of the Authority. Each member state has one vote in the Assembly. The Assembly formulates the policies of the ISA and is responsible for approving the Authority's budget, rules, regulations, and procedures concerning seabed mining.
2. **The Council:** The Council is the executive organ of the ISA and is responsible for supervising and coordinating the implementation of seabed mining regulations. It consists of representatives elected by the Assembly from among the ISA's member states. The Council oversees the activities of the Legal and Technical Commission, the body responsible for evaluating applications for seabed exploration and exploitation.
3. **The Secretariat:** The Secretariat, headed by the Secretary-General, is the administrative arm of the ISA. It provides the necessary services and support for the functioning of the Authority.
4. **The Legal and Technical Commission:** The Commission is a specialized body of experts responsible for reviewing exploration applications, preparing draft regulations, and making recommendations on environmental protection and resource management.

Equitable Sharing of Benefits

One of the ISA's central principles is ensuring that the benefits derived from the exploitation of the international seabed area, which is designated as the "common heritage of mankind," are shared equitably. This includes provisions for:

- **Financial Mechanisms:** The ISA is tasked with creating mechanisms for distributing the revenues generated from seabed mining to all member states, especially to benefit developing countries.
- **Capacity-Building and Technology Transfer:** The ISA promotes the transfer of technology and knowledge from developed countries to developing ones, enabling them to participate in seabed mining and ensuring they benefit from these resources.

5. Supreme Court: Partner's Contribution is Firm's Property

The Supreme Court of India, in *Sachin Jaiswal v. M/s Hotel Alka Raje & Others*, reaffirmed that a **partner's contribution to a partnership firm becomes the firm's property** as per **Section 14 of the Partnership Act, 1932**. The Court held that **legal heirs of a deceased partner cannot claim ownership over such property**, except for a share in the firm's profits in proportion to the contribution made.

A **bench comprising Justices Sudhanshu Dhulia and Ahsanuddin Amanullah** dismissed the appeal of the legal heirs who sought ownership over a hotel property contributed to a partnership firm by their deceased father, **Bhairo Prasad Jaiswal**. The Court noted that:

- Once a property is **brought into the partnership**, it **automatically becomes the firm's property**, unless a contrary intention is proved.
- A **formal transfer deed is not required**, as the contribution itself **transfers ownership to the firm**.
- The construction of a hotel on the land after forming the partnership was **clear evidence** of the partner's intention to contribute the property to the firm.

Weekly Focus

Case of the week : McNaughten's Case

The **McNaughten's Case** (also spelled **M'Naghten's Case**) of 1843 is one of the most famous and influential cases in the history of criminal law, particularly regarding the **insanity defense**. The case set out the fundamental principles that determine when a defendant can claim insanity as a defense to criminal responsibility.

Facts of the Case:

Daniel McNaughten, a Scottish woodturner, suffered from **paranoid delusions**. He believed that the British Prime Minister, **Sir Robert Peel**, was conspiring against him. On **January 20, 1843**, in an attempt to assassinate Sir Robert Peel, McNaughten mistakenly shot and killed **Edward Drummond**, Peel's private secretary. After his arrest, it was evident that McNaughten was mentally ill.

At trial, McNaughten's defence argued that he was not responsible for his actions due to his **insane delusions**. The defence was successful, and McNaughten was acquitted on the grounds of insanity. This acquittal caused public outrage, and the case led to parliamentary questions about how insanity should be defined in law.

Legal Significance:

In response to the public and political outcry following McNaughten's acquittal, the **House of Lords** sought clarification from the judges of the time. The **McNaughten Rules** (sometimes called the **M'Naghten Rules**) were formulated as a result of these questions. These rules continue to form the legal standard for the insanity defence in many common law jurisdictions.

McNaughten Rules:

The McNaughten Rules laid down the following key principles for determining insanity in criminal law:

1. **Presumption of Sanity:** Every person is presumed to be sane unless proven otherwise.
2. **Defect of Reason:** To establish a defense on the ground of insanity, it must be proven that the defendant was suffering from a "defect of reason" caused by a "disease of the mind."
3. **Inability to Understand the Nature of the Act:** The defendant must not have understood the nature and quality of the act they were committing. If they did understand it, they must not have known that what they were doing was wrong.
Specifically, the rules stated:

"To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."

PYQ Solution

1. **What is 'Constitutionalism'? Explain the said concept both in its negative and positive aspects in the context of India's tryst with 'Constitutionalism' and 'Constitutional Governance.' (10 Marks, 2014)**

Constitutionalism refers to a system of governance where the powers of the government are not absolute but are limited by the law. It aims to ensure that governmental authority is exercised within certain constraints to prevent arbitrary or despotic rule. In contrast, a mere constitution, without the principle of constitutionalism, may allow for unchecked governmental powers, leading to authoritarianism. Constitutionalism is thus the essence of a limited government, where power is distributed, controlled, and balanced to safeguard individual rights and freedoms.

Positive and Negative Aspects

Constitutionalism can be understood both in its positive and negative dimensions. The negative aspect of constitutionalism refers to the limitation on the arbitrary exercise of power by the government.

This **negative aspect** aims to ensure that no authority is vested with unchecked power, thereby guarding against despotism. In the Indian context, the principle of "Rule of Law" serves as a manifestation of this negative aspect. The judiciary, particularly through judicial review, plays a critical role in ensuring that executive and legislative actions remain within the boundaries of the Constitution.

Basic Structure doctrine reflects the negative aspect of constitutionalism, where even constitutional amendments are subject to judicial scrutiny to prevent the erosion of fundamental rights and principles.

The **positive aspect** of constitutionalism, on the other hand, emphasises the need for active governance to fulfil the objectives of the state. This dimension calls for the government to act effectively within its constitutional framework to promote the welfare of the people, protect their rights, and ensure social justice. The Directive Principles of State Policy (DPSP) in the Indian Constitution, though non-justiciable, represent this positive aspect.

Constitutionalism and Constitutional Governance

India's constitutional governance is a dynamic balance between the positive and negative aspects of constitutionalism. The framers of the Indian Constitution envisioned a system of checks and balances that ensures both effective governance and the protection of individual freedoms.

The separation of powers between the executive, legislative, and judicial branches of government plays a crucial role in this regard. Article 50 of the Constitution explicitly calls for the separation of the judiciary from the executive in public services, highlighting the need for an independent judiciary to prevent the arbitrary use of power.

Moreover, constitutional governance in India has been shaped by the principles of federalism, which promote decentralisation of power.

- The division of powers between the Union and the states, as enumerated in the Seventh Schedule of the Constitution, ensures that power is not concentrated at the central level.
- Federalism embodies the positive aspect of constitutionalism by promoting local governance and decentralising decision-making powers. This decentralisation ensures that regional aspirations and needs are addressed while maintaining the integrity of the nation.

Challenges to Constitutionalism

Despite the robust constitutional framework, India's tryst with constitutionalism has faced challenges. Executive overreach, the misuse of the emergency provisions under Article 356, and legislative attempts to curb judicial independence have threatened the balance of power at various points in India's history.

The judiciary's compromised position during this period, particularly the infamous *ADM Jabalpur v. Shivkant Shukla* case, where the Court ruled in favour of unlimited executive power, demonstrated the fragility of constitutionalism.

However, subsequent judicial interventions, such as the *Minerva Mills* and *Indira Nehru Gandhi v. Raj Narain* cases, restored the supremacy of constitutionalism by reasserting the principle of limited government. The judiciary has, thus, been a crucial actor in India's journey toward maintaining constitutionalism, correcting deviations when necessary.

