

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

21st Oct - 27th Oct 2024

1. Supreme Court Clarifies States' Limited Power Over Industrial Alcohol.....	1
2. Supreme Court Validates Group of Companies Doctrine in Indian Arbitration.....	2
3. Hijacking in International Law.....	3
4. "Buyer Beware" to "Seller Beware" in Consumer Protection Law.....	3
Weekly Focus	
Case of the week: Supriyo @ Supriya Chakraborty v. Union of India (2023).....	4
PYQ Solution.....	5
GS and Law Optional Overlap	
Law optional and GS - II: Misuse of Article 356.....	6
Law Optional and GS - IV: Tolerance and Indian Constitution.....	7

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1. Supreme Court Clarifies States' Limited Power Over Industrial Alcohol

In a landmark decision, a nine-Judge Bench of the Supreme Court of India, led by Chief Justice Dr. D.Y. Chandrachud, addressed the longstanding debate on the regulation of industrial alcohol. The Court examined whether the term "intoxicating liquor" under Entry 8 of List II (State List) in the Seventh Schedule of the Constitution includes industrial alcohol or is limited to alcohol meant for human consumption.

Referring to the precedent in *Synthetics and Chemicals Ltd. v. State of UP* (1990), the Court ruled that "intoxicating liquor" pertains only to alcohol intended for human consumption. Chief Justice Chandrachud clarified, "The phrase '**intoxicating liquor**' in Entry 8 means '**liquor** which is consumable by a human being as it is,'" excluding industrial alcohol from this definition. This interpretation restricts States from regulating industrial alcohol, preserving it as a Union-controlled matter under the Industries (Development and Regulation) Act (IDRA).

However, the Court acknowledged a limited regulatory role for States to ensure public health and safety. While industrial alcohol remains under Union control, States can regulate to prevent its misuse as a substitute for potable alcohol. This distinction means that while States may legislate to prevent diversion of industrial alcohol to human consumption, they cannot impose excise duty on it as they do on potable alcohol.

The Court emphasized the need to maintain the constitutional balance of legislative powers, affirming that while the Union regulates industrial alcohol, States have limited oversight to prevent misuse. This decision not only reinforces the federal framework of legislative powers but also preserves the integrity of legislative competence between the Union and State governments.

2. Supreme Court Validates Group of Companies Doctrine in Indian Arbitration

In *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* (2023), the Supreme Court of India, through a five-judge Constitution Bench led by Chief Justice D.Y. Chandrachud, addressed whether non-signatories to a contract could be compelled to participate in arbitration under the Group of Companies (GoC) Doctrine. This ruling settled key questions regarding the inclusion of non-signatories in arbitration and the validity of the GoC Doctrine in Indian arbitration law.



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Background of the Case: Cox and Kings Ltd. entered into a software licensing agreement with SAP India Pvt. Ltd. in 2020, which included an arbitration clause. Although the dispute arose from issues with the software, Cox and Kings sought to initiate arbitration against SAP India and its parent company, SAP SE, based in Germany. SAP SE was neither a signatory to the agreement nor formally involved in the dispute.

Nonetheless, Cox and Kings argued that SAP SE's involvement in the project demonstrated implied consent to the arbitration agreement. When SAP India failed to appoint an arbitrator, Cox and Kings approached the Supreme Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking SAP SE's inclusion in the arbitration.

Court's Decision: The Supreme Court upheld the GoC Doctrine as valid and applicable in India, permitting non-signatory companies within a corporate group to be bound by an arbitration agreement when specific conditions are met.

The Court ruled that a non-signatory may be compelled to arbitrate if there is clear evidence of intent to be bound by the agreement. This intent can be inferred from factors such as the relationship between the parties, the nature of the transaction, and the extent of a non-signatory's involvement in contract performance.

Conditions for Invoking the GoC Doctrine

Chief Justice Chandrachud outlined conditions under which the GoC Doctrine may apply, such as:

1. **Mutual Intent:** Demonstrable intent by all parties, including the non-signatory, to be bound by the arbitration agreement.

2. **Relationship Between Parties:** Close corporate relationships, such as a parent-subsidary dynamic, where the non-signatory is substantially involved.
3. **Commonality of Subject Matter:** Shared interests or objectives within the transaction.
4. **Composite Nature of the Transaction:** The transaction's interdependent structure, making separation of parties impractical.
5. **Contract Performance:** Active participation by the non-signatory in executing the contract.

The Court emphasized that simply being part of a corporate group is insufficient; concrete evidence of a deliberate collaboration in the project is required to bind a non-signatory.

Courts and Arbitral Tribunals: The Court clarified the standard of review at the referral stage under Sections 8 and 11 of the Arbitration Act. At this preliminary stage, the court's role is limited to determining the existence and validity of the arbitration agreement and whether there are grounds for referring the non-signatory to arbitration. Complex questions of jurisdiction, including whether a non-signatory is genuinely bound, are better suited for determination by the arbitral tribunal under Section 16, which enables the tribunal to decide its jurisdiction.

In summary, *Cox and Kings Ltd. v. SAP India Pvt. Ltd.* reinforces that non-signatories can be bound by arbitration agreements in India, provided there is compelling evidence of intent to arbitrate, thereby extending the scope of arbitration while preserving the autonomy of genuinely separate entities.

3. Hijacking in International Law

Hijacking, or unlawful seizure of an aircraft, is a serious international crime governed by several treaties and conventions designed to combat threats to civil aviation and ensure the safety of international air travel. The **Tokyo Convention (1963)** was the first major international instrument to address crimes committed onboard aircraft, providing the aircraft's state with jurisdiction over offenses and enabling cooperation with other states to prevent and address hijacking. However, the Tokyo Convention lacked provisions specifically for hijacking.

This gap was addressed by the **Hague Convention (1970)**, which obligates signatory states to criminalize hijacking and prosecute or extradite offenders regardless of nationality or the hijacked aircraft's country of registration.

The **Montreal Convention (1971)** further strengthened the legal framework by expanding the scope to include sabotage and other acts threatening aircraft safety. These conventions, along with **UN Security Council Resolutions** and the **International Civil Aviation Organization (ICAO) protocols**, promote international cooperation in tracking, prosecuting, and extraditing hijackers.

Under these laws, hijacking is treated as an international crime, mandating extradition or prosecution ("aut dedere aut judicare") and encouraging states to share intelligence and assistance. This collective legal framework aims to ensure that perpetrators of hijacking are apprehended and face justice, underscoring the global commitment to maintaining security in international aviation.

4. "Buyer Beware" to "Seller Beware" in Consumer Protection Law

Historically, consumer transactions operated on the principle of *caveat emptor*, or "buyer beware," which placed the burden of due diligence on the buyer. Under this approach, buyers were responsible for examining goods and ensuring they met their needs before purchase, with sellers bearing minimal

responsibility for issues arising from defects, misrepresentations, or substandard quality. However, as markets evolved and goods became more complex, buyers were increasingly at a disadvantage, especially when faced with sophisticated marketing, hidden defects, and information asymmetry.

Recognizing the need for a fairer system, consumer protection laws worldwide have gradually shifted toward a *caveat venditor*, or "seller beware" model. Under this framework, sellers are held to higher standards of accountability, with an emphasis on transparency, fair trade practices, and responsibility for product quality and safety. Key elements include:

1. **Duty of Disclosure:** Sellers are required to disclose important information about goods or services, including possible defects, risks, and warranty terms, to ensure consumers can make informed decisions.
2. **Product Liability:** Manufacturers and sellers are now liable for harm caused by defective products, extending their responsibility beyond mere sale to include post-sale obligations.
3. **Consumer Rights and Remedies:** Laws often provide consumers with the right to refunds, repairs, and replacements if products are faulty or do not meet reasonable expectations. This includes protection against misleading advertising and guarantees of product quality and durability.
4. **Proactive Regulatory Oversight:** Government bodies like the Consumer Protection Authority in India, the Federal Trade Commission in the U.S., and various European Union consumer agencies actively monitor and enforce regulations, ensuring companies comply with fair practices and safeguarding consumer interests.

In India, the **Consumer Protection Act, 2019** is a prime example of this shift. It strengthens consumer rights, introduces penalties for unfair practices, and includes provisions for product liability. Additionally, the Act empowers consumers through digital platforms and a centralized consumer complaint redressal mechanism.

This paradigm shift from "buyer beware" to "seller beware" aims to create a fair marketplace, fostering trust and accountability in commercial transactions and protecting consumers from exploitation in increasingly complex market environments.

De Facto IAS

Weekly Focus

Case of the week: Supriyo @ Supriya Chakraborty v. Union of India (2023)

Key Issues:

1. Do LGBTQIA+ individuals have a right to marry?
2. Does the exclusion of same-sex marriages under the Special Marriage Act (SMA) amount to unconstitutional discrimination?
3. Do LGBTQIA+ individuals have the right to form civil unions?

Background

Same-sex couples petitioned for recognition of LGBTQIA+ marriages under the SMA, arguing the exclusion violated rights to equality and dignity. The government opposed, arguing marriage as a social and religious institution should be legislated, not judicially mandated.

Supreme Court's Decision

1. **No Fundamental Right to Marry (Unanimous):** The Court ruled that marriage is not a fundamental right under the Constitution; only Parliament can legislate changes to marriage laws.
2. **SMA's Exclusion of Same-Sex Marriages (Unanimous):** The Court held that the SMA's gendered language (terms like "bride" and "groom") cannot be reinterpreted to include same-sex marriages without legislative changes.
3. **Civil Unions for LGBTQIA+ Couples (3:2 Majority):** A majority held that non-heterosexual couples do not have a right to civil unions, leaving it to Parliament. However, a minority (Chief Justice Chandrachud and Justice Kaul) supported the right to civil unions as a matter of personal freedom and equality.
4. **Adoption Rights (3:2 Majority):** The majority held that unmarried couples, including same-sex couples, do not have adoption rights under the JJ Act. The minority disagreed, arguing that "couple" includes unmarried and same-sex couples.
5. **Marriage Rights for Transgender Persons in Heterosexual Relationships (Unanimous):** The Court affirmed that transgender persons in heterosexual relationships have the right to marry under existing laws.

PYQ Solution

In Negligence, the chain of causation must remain intact," Describe the essentials of 'negligence' by referring to case-laws.

Negligence in legal parlance refers to the breach of a duty caused by the omission to do something which a reasonable person, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or not doing something which a prudent and reasonable man would not do. A fundamental aspect of negligence is the unbroken chain of causation.

Essentials of Negligence:

1. **Duty of Care:** The defendant owes a duty of care to the plaintiff. In the landmark case, *Donoghue v Stevenson* [1932] AC 562, Lord Atkin laid down the "neighbour principle", stating that individuals owe a duty of care not to harm those who are in their vicinity or "neighbourhood", meaning those people who are foreseeable as being closely and directly affected by the actor's actions.
2. **Breach of that Duty:** The defendant breaches the said duty. In *n Blyth v Birmingham Waterworks Co.* (1856), Alderson B defined negligence as the omission to do something which a reasonable person would do or doing something which a prudent and reasonable man would not do.
3. **Direct Causation:** The breach of duty results in an injury, and there exists a direct link or chain of causation between the breach and the damage. The "but for" test is often applied, i.e., but for the defendant's actions, the harm would not have occurred. For instance, in *Barnett v. Chelsea & Kensington Hospital Management Committee* [1969] 1 QB 428, where the plaintiff died due to arsenic poisoning and not the negligence of the hospital, the chain of causation was broken.
4. **Damage:** Actual harm or damage, either physical, emotional, or financial, should have been suffered by the plaintiff due to the defendant's breach. In *Dulieu v White & Sons*

[1901] 2 KB 669, it was observed that if a person negligently drives a horse and van against a public house and injures a customer inside, he can be held liable for negligence.

Chain of Causation:

Ensuring the chain of causation remains intact is crucial. The plaintiff must demonstrate that the defendant's negligence was the proximate cause of the injury suffered.

In the case of *Palsgraf v. Long Island Railroad Co.* 248 N.Y. 339 (1928), the court held that there must be a reasonably close causal connection between the conduct and the resulting injury, termed "proximate cause" in legal terminology.

However, it's also essential to understand that the chain of causation can be broken by an intervening act or event. This is termed as "novus actus interveniens."

In *Knightley v Johns* [1982] 1 WLR 349, due to the negligence of one driver, an accident occurred. Another officer incorrectly directed cars, causing further accidents. The court held that the officer's negligent act was a new intervening act, breaking the chain of causation from the original negligent driver.

[Law Optional and GS Papers overlap](#)

Law optional and GS - II: Misuse of Article 356

Article 356 of the Constitution which empowers the imposition of President's Rule in a State had its notorious counterpart in Section 93 of the Government of India Act 1935 which provided for Governor's Rule in the provinces. It is curious that despite the unhappy experience of the misuse of this 'disfiguring' provision during British colonial rule Article 356 was ultimately incorporated in the Constitution.

Intent and Vision of the Founding Fathers: Constituent Assembly envisaged Article 356 as a measure for "grave emergencies," expecting it to be a "dead letter" in regular governance.

Apparently contemporary historical events cast a deep shadow on the deliberations of the Constituent Assembly. Our Founding Fathers believed that "the danger of a grave emergency arising in this country is not merely theoretical; it is very real"¹.

In the words of Alladi, "we are in grave and difficult times". They were convinced of the need for a strong Centre which could effectively deal with emergent situations.

Moreover, it was the general expectation that Article 356 would be invoked in extreme situations and would not be utilised as a "surgical operation for a mere cold or catarrh";

The Founding Fathers shared the hope of Dr Ambedkar that this provision "will never be called into operation" and "would remain a dead letter".

Dr Ambedkar had assured the Assembly that "the first thing the President will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution.

Patterns and Criticisms of Misuse: Despite the original intent, Article 356 has been invoked about 100 times by successive central governments, often for political motives rather than genuine constitutional breakdowns. Every political party that has held power at the Centre has used Article 356 for political gains, undermining federal principles.

Judicial Review and Article 356

Before the landmark *S.R. Bommai v. Union of India*, judicial review was limited. High Courts and early Supreme Court cases often held that the President's proclamation under Article 356 was beyond judicial scrutiny.

State of Rajasthan v. Union of India: The Court recognized limited scope for review, rejecting complete judicial abstention, but narrowly defined areas for interference.

S.R. Bommai v. Union of India (1994), Established broader grounds for judicial review, stating that:

- The President's satisfaction under Article 356 should be based on "objective material."
- Judicial review is permissible to examine if the proclamation was mala fide, based on extraneous factors, or lacked relevance to constitutional breakdown.

The Court further held that:

- Dissolution of the state assembly before parliamentary approval of the proclamation is unconstitutional.
- Political motives for invoking Article 356, such as a change of government at the Centre, are invalid grounds.

Scope of Judicial Review Post-Bommai

- **Objective vs. Subjective Satisfaction:** The Supreme Court stated that while the President's satisfaction is subjective, it must be based on objective material, open to judicial examination.
- **Limitations:** Courts cannot delve into the "truth or correctness" of the material facts but can assess if the proclamation was based on relevant grounds.
- 'Floor Test' Principle: Bommai established that the strength of a state ministry must be proven in the legislative assembly rather than relying on the Governor's assessment.

Additional Safeguards against Misuse

- **Prior Warning Requirement:** Based on recommendations from the Sarkaria Commission, the Bommai judgment emphasizes that the central government should ideally issue a warning to the state before invoking Article 356.
- **Recommendations of the Sarkaria Commission:** While not legally binding, the Commission's guidelines are expected to be followed, failing which the presumption may arise of illegality or abuse of power.

Impact on Federalism: Article 356 has historically strained Centre-State relations and compromised federalism. The Bommai judgment is seen as a bulwark for federalism, introducing checks on the Centre's power to impose President's Rule arbitrarily.

Law Optional and GS - IV: Tolerance and Indian Constitution

Tolerance is the ability to appreciate, tolerate, and value others who have different beliefs than oneself, regardless of their race, religion, ethnicity, or other characteristics. It equips one with the ability to put up with or accept the existence of ideas or behaviors they disagree with. When one prioritizes important objectives over minor differences, this is achievable.

In this age of globalization, where individuals from different racial, ethnic, and religious backgrounds coexist and the world has become more multicultural and diverse, it is crucial to promote mutual love and affection as well as tolerance and harmony. Societies cannot sustain their long-term peace and commitment to one another without tolerance and harmony.

Examples to better understand the concept of tolerance:

- Accepting People's Traditions And Religions
- Accepting LGBTQI+ People
- Integrated Schools
- The practice of Free Speech Accepting People's Right to Live in the Way They Want
- Accepting People's Political Stances

The Indian Constitution embodies the principle of tolerance, recognizing and protecting the diverse fabric of India's society. As a nation known for its plurality, India's constitutional framework upholds the values of acceptance, respect, and harmony across racial, religious, ethnic, linguistic, and ideological differences. Through various provisions, the Constitution encourages citizens to appreciate and coexist with individuals who may have beliefs or lifestyles different from their own.

Constitutional Provisions Supporting Tolerance

- **Accepting People's Traditions and Religions:** Through Articles 25-28, the Constitution protects the right to religious freedom, ensuring that people can follow their customs without fear of discrimination.
- **Accepting LGBTQI+ People:** The constitutional interpretation of Article 21 (Right to Life and Personal Liberty) has been expanded by the judiciary to encompass dignity, identity, and privacy, protecting the rights and existence of LGBTQI+ individuals and fostering an inclusive society.
- **Integrated Schools:** Article 19 and 30's protection of minority educational institutions supports an educational environment where children from different backgrounds learn and grow together, promoting tolerance and understanding from a young age.
- **The Practice of Free Speech:** Article 19 guarantee of free speech encourages open dialogue, allowing citizens to discuss diverse views, fostering a culture of tolerance and respect for differing opinions.
- **Acceptance of Diverse Lifestyles:** The Right to Life and Personal Liberty (Article 21) protects individuals' freedom to live their lives as they choose, so long as they do not infringe on others' rights. This aligns with a constitutional ethos of tolerance toward various lifestyles and choices.