

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 12th - 18th August, 2024**

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## Debate on the Inclusion of Section 377 in the Bhartiya Nyaya Sanhita

The Delhi High Court recently questioned the Central government's stance regarding the exclusion of provisions dealing with non-consensual same-sex offences from the newly enacted Bhartiya Nyaya Sanhita (BNS). This query arises from the concern that the absence of such provisions might lead to legal gaps, particularly affecting the LGBTQ community. The court's inquiry reflects a broader debate on how laws evolve with societal norms and the necessity to safeguard all citizens against sexual offences.

### Judicial Inquiry and Government's Position

The Acting Chief Justice Manmohan and Justice Tushar Gedela of the Delhi High Court highlighted the potential legal vacuum if non-consensual acts are not explicitly criminalised in the new legislation. The government's counsel argued that legislative changes are beyond the scope of judicial interference.

However, the bench responded by emphasizing the importance of having clear legal provisions to address all forms of sexual violence, thereby underscoring the judiciary's role in interpreting the law in the context of evolving social and ethical standards.

### Petitioner's Concerns and Court's Response

The petitioner pressed for the need to either reinstate the earlier provisions from the repealed Section 377 of the Indian Penal Code or to ensure that rape laws are interpreted in a gender-neutral manner. The court's deliberation brought to light the complexity of aligning legal frameworks with the principles of equality and non-discrimination. Justice Gedela's remarks pointed out the absurdity of excluding specific acts from the scope of criminal offences simply because they are not mentioned in the statute.

### **Implications for the LGBTQ Community**

This legal discussion is important for the LGBTQ community, as it directly impacts their protection under the law against sexual offences. The absence of explicit provisions for non-consensual same-sex acts could lead to a denial of justice for victims. The court's proactive approach in seeking clarification and detailed instructions from the government is a crucial step towards ensuring that the legal system remains inclusive and comprehensive.

### **Rigidity in Election Disputes**

In a recent judgement, the Kerala High Court emphasised the strict statutory nature of election-related litigations, affirming that the process is strictly governed by laws without the application of common law or equity principles. The case, *K. P. Mohammed Mustafa v Najeeb Kanthapuram*, revolved around the validity of 348 postal ballots rejected in the Perinthalmanna constituency during the 2021 Kerala Legislative Assembly Election. The petitioner, representing the Left Democratic Front (LDF), lost by a mere 38 votes and challenged the election result based on these rejections.

### **Strict Adherence to Statutory Provisions**

Justice C. S. Sudha clearly stated that the rights to elect, be elected, and dispute elections are strictly statutory creations and hence must adhere to the legislated procedures and limitations. This perspective reinforces the concept that electoral processes are bound by specific statutes, leaving minimal room for judicial discretion based on fairness or equity. The trial of election disputes, therefore, must follow a stringent pathway laid out by the legislation, reflecting a straitjacket approach as described by the bench.

### **The Controversy Over Postal Ballot Rejections**

The petitioner argued that the improper handling and rejection of postal ballots, particularly from absentee voters like senior citizens, the physically disabled, and COVID-19 affected persons, materially affected the election outcome. However, the defence and the court pointed out that the election officers followed the guidelines, albeit strictly, ensuring that all procedural steps like filling out forms and sealing envelopes were appropriately managed, which according to the guidelines, did not infringe upon the voters' rights.

### **Court's Observations and Conclusion**

The Court, while recognizing the guidelines issued by the Election Commission, ultimately held that the guidelines themselves do not override statutory provisions. It found no violation of the election procedures that would justify declaring the election void. The court's decision to dismiss the petition was based on the ground that even if the contested votes were counted, the respondent would still lead by a margin, albeit smaller.

### **Stricter Oversight on Wind Turbine Installations**

In a significant ruling, the Gujarat High Court has addressed concerns over the compliance of wind turbine installations with environmental and health guidelines near residential areas in Bhavnagar. The court's intervention came after Vikrambhai Nanjibhai Dabhi filed a public interest litigation alleging that KP Energy Pvt Ltd failed to adhere to the Ministry of New and Renewable Energy's

guidelines, which prohibit the installation of wind turbines within 500 metres of any dwelling to mitigate noise pollution.

### **Court's Concerns and Directives**

The division bench, including Chief Justice Sunita Agarwal and Justice Pranav Trivedi, was particularly critical of the discrepancies highlighted in the affidavits and reports regarding the installation of wind turbines too close to residential areas and a primary school. Despite KP Energy Pvt Ltd's contention that such installations were permissible, the court firmly rejected this claim, emphasising the need to prioritise the health and safety of the local community and schoolchildren.

### **Inquiry and Evidence**

The initial inquiry led by a three-member team revealed serious violations, including one turbine installed within the prohibited 500-metre radius of a primary school. This prompted the court to order a more comprehensive and independent inquiry led by the Chairman of the Gujarat Energy Development Agency (GEDA). The inquiry aims to reassess the distances of turbines from protected zones and ensure strict compliance with the 2016 guidelines.

### **Legal and Social Implications**

This case highlights the judiciary's proactive stance in ensuring that development projects, especially those in the renewable energy sector, do not compromise public health and environmental standards. The directive for an independent inquiry reflects the court's intent to hold both private developers and governmental agencies accountable for adhering to environmental norms and safeguarding public interests.

### **Next Steps for GEDA**

The Chairman of GEDA has been tasked with conducting a thorough investigation into the permissions granted for the windmill projects and ensuring that all installations comply with national standards. This includes a personal affidavit to be presented to the court by August 30, 2024, detailing the findings and measures taken to rectify any violations.

## **Privacy Over Public Interest: Withholding Educational Information Under RTI**

In a notable judgement, the Delhi High Court has endorsed the withholding of the names of educational institutions attended by employees of a public authority, citing privacy concerns over public interest. The case, Kamal Bhasin Vs. Central Public Information Office & Anr, revolved around an RTI application seeking detailed employee information from the Power Finance Corporation Limited.

### **The Court's Rationale**

The Division Bench, including Acting Chief Justice Manmohan and Justice Tushar Rao Gedela, addressed an appeal against an earlier decision that supported the Central Information Commissioner's (CIC) exemption of such data from disclosure. The appellant had sought information including names, qualifications, alma maters, and current positions of executives, which the corporation partly provided but excluded educational backgrounds and institutional affiliations.

**Privacy Versus Public Interest**

The heart of the court's decision lay in the interpretation of Section 8(1)(j) of the RTI Act, which exempts from disclosure any personal information that has no bearing on public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure. The court agreed with the CIC's view that disclosing educational details of employees serves no substantial public interest and predominantly infringes on individual privacy.

**Implications of the Judgment**

This ruling has significant implications for public authorities and the scope of information that can be requested under the RTI. It sets a precedent on how privacy concerns can limit the extent of transparency under the act, particularly concerning personal data of government or public employees. The court's emphasis on the lack of a bona fide public interest in the appellant's request, coupled with the context of a previous dismissal of a relative from the corporation, further coloured the legitimacy of the RTI request.

**Streamlining Patent Law: Jan Vishwas (Amendment of Provisions) Act, 2023**

In an ambitious move to promote ease of doing business, the Indian government enacted the Jan Vishwas (Amendment of Provisions) Act, 2023, which significantly amends various laws, including the Indian Patents Act, 1970. Effective from August 1, 2024, these amendments aim to decriminalise minor offences and adjust penalties, reflecting a shift towards a more business-friendly legal environment.

**Amendments to the Patents Act**

The JV Act introduces pivotal changes to the Patents Act by replacing imprisonment and heavy fines with more proportionate monetary penalties for certain offences. This includes the decriminalisation of offences under Sections 120, 122, and 123, which pertain to the misrepresentation of patent status and compliance with patent working disclosures. Specifically, the act has increased financial penalties for false patent claims and non-compliance with the submission of Form 27, which requires patentees to disclose how a patent is being commercially exploited.

**Revised Penalties**

**False Patent Representation (Section 120):** Penalty increased to up to ten lakh rupees, with an additional fine for continuing claims.

**Non-Submission of Form 27 (Section 122):** The maximum penalty has been reduced, with a daily fine for ongoing non-compliance.

**False Information in Form 27 (Section 122):** Replaced imprisonment with a financial penalty calculated as a percentage of sales or turnover.

**Unregistered Patent Agent Practice (Section 123):** Increased initial penalty and added a daily fine for continued offences.

**Misdescription of Business Association with Patent Office (Section 121):** The provision related to misrepresenting business connections with the patent office has been removed entirely.

## Case of the Week: **Golaknath v. State of Punjab**

The landmark judgement of *Golaknath v. State of Punjab* marks a significant turning point in the constitutional history of India. This Supreme Court case, adjudicated in 1967, fundamentally altered the landscape of constitutional amendments and the interpretation of fundamental rights in India.

### Facts of the Case

The case originated from a dispute involving the Golaknath family, who owned over 500 acres of farmland in Punjab. The Punjab Security and Land Tenures Act aimed to redistribute excess land to prevent concentration of land ownership. The Golaknath family challenged the constitutionality of this Act, claiming it violated their fundamental rights under Articles 19 and 31 of the Indian Constitution, specifically the right to acquire, hold and dispose of property.

### Issues Raised

The primary legal issue centred on whether the Parliament had the power to amend fundamental rights enshrined in the Constitution. The question was whether the amendment acts passed by the Parliament, which aimed to curtail fundamental rights, were valid.

### Judgment

The Supreme Court, in a narrow 6-5 decision, held that the Parliament does not have the power to amend the fundamental rights guaranteed by the Constitution. The court declared that the fundamental rights are immutable and transcendental in nature and placed them beyond the reach of the Parliament's amending powers under Article 368. The judgement famously articulated that the fundamental rights are 'transcendental permanent' and not within the ambit of parliamentary modification.

### Significance and Impact

The *Golaknath* case is significant for its introduction of the doctrine of 'prospective overruling,' which means that the law declared by the court will apply to cases arising in the future and not to past cases. This was a strategic move to avoid reopening past settled issues and maintain judicial stability.

This case set the stage for future constitutional debates and was later challenged by the 24th Amendment Act of 1971, leading to the *Kesavananda Bharati* case, where the basic structure doctrine was evolved.



## Repeated PYQ

**Q. Arbitration, as an alternate method of adjudication is acceptable to parties largely irrespective of the fact that access to court by the parties has been curbed drastically under the Arbitration and Conciliation Act, 1996. Explain.**

**Ans.** Arbitration, as enshrined in the Arbitration and Conciliation Act, 1996, represents a significant shift from traditional litigation to alternative dispute resolution (ADR). It offers parties a more flexible, efficient, and specialised forum for resolving disputes. Despite the limitation of access to courts under this framework, arbitration remains highly favoured by parties across various sectors.

### Reasons for Its Acceptance

#### 1. Expediency and Efficiency

One of the primary reasons parties opt for arbitration is the speed with which disputes can be resolved. Traditional court proceedings often suffer from delays due to procedural formalities and congested court dockets. Arbitration, on the other hand, offers a more streamlined process. Arbitrators are empowered to set their timelines, and the proceedings are less formal than those in a courtroom, allowing for quicker resolution of disputes.

#### 2. Confidentiality

Confidentiality is another significant advantage of arbitration. Unlike court proceedings, which are typically public, arbitration proceedings are private, and the details of the dispute and the award remain confidential. This aspect is particularly attractive to parties involved in commercial disputes, where the protection of trade secrets and sensitive business information is crucial.

#### 3. Specialised Expertise

Arbitration allows parties to choose arbitrators with specific expertise relevant to the subject matter of the dispute. This contrasts with traditional litigation, where the judge assigned to the case may not have specialised knowledge of the industry or technical issues involved. The selection of an expert arbitrator can lead to more informed and equitable decisions.

#### 4. Finality of Awards

One of the hallmarks of arbitration under the 1996 Act is the finality and binding nature of arbitral awards. Section 34 of the Act allows for the setting aside of an arbitral award only on very limited grounds, such as fraud, corruption, or a violation of public policy. This limited scope for challenging awards ensures that arbitration is not just an alternative to court litigation but a definitive one.

### Limitation on Judicial Intervention

The 1996 Act is explicit in its intent to minimise judicial intervention in arbitration. This is evident in several provisions that restrict the courts' ability to interfere with the arbitration process. For instance, Section 8 mandates that if an action is brought before a court in a matter that is subject to an arbitration agreement, the court must refer the parties to arbitration.

Similarly, Section 16 empowers the arbitral tribunal to rule on its own jurisdiction, a concept known as "Kompetenz-Kompetenz," which further limits the role of courts in determining the validity of the arbitration agreement or the tribunal's jurisdiction.

The ability to choose specialised arbitrators, the finality of awards, and the expedited nature of the process make arbitration a preferred method of dispute resolution in various sectors. While the Act limits judicial intervention to preserve the autonomy of the arbitral process, this very limitation enhances the attractiveness of arbitration, ensuring that disputes are resolved with minimal interference and maximum efficiency.

