

Weekly Update for Law optional
UPSC A mix of Conceptual, Current/Contemporary Topics
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1. Respectful Last Rites Part of Article 21

The Allahabad High Court has taken suo moto cognizance of a case where a woman's skeletal remains were found stored in a morgue in Etawah, Uttar Pradesh for over three years.

Court's Observation: The bench, which included Chief Justice Pritinker Diwaker and Justice Ajay Bhanot, noted, "Prima facie the right to have mortal remains consigned to elements of nature by the conduct of respectful last rites as per applicable customs also inhere in Article 21 of the Constitution of India."

Identity Crisis: While a family claimed the remains were of their missing daughter, newspaper reports suggest that the identity of the deceased remains unconfirmed.

Court's Directions: The High Court has sought clarification on several points:

- The usual time frame for conducting the last rites of a body stored in a morgue and the reason for the delay in this specific case.
- Any existing rules that obligate state authorities to conduct the last rites within a set period.
- A detailed chronology from the time the body was stored in the morgue till present.
- A comprehensive update on the case's investigation, including DNA profiling timelines.

A mention was made about Justice Bhanot's decision in Sampurnanand v. State Of U.P. and 2 Others. It was highlighted that, "The silence of the dead does not stifle their voice... The right to reputation is one such right." Furthermore, it was observed that deceased individuals also possess the right to reputation under Article 21.

2. Towards Ending Manual Scavenging

In a significant move towards eradicating the deplorable practice of manual scavenging, the Supreme Court of India has issued 14 comprehensive directions to the Union and State Governments. These directives, issued in the case of Dr. Balram Singh v. Union of India and others, are aimed at ensuring the complete elimination of manual sewer cleaning and the rehabilitation of sewage workers and their families. This landmark decision reflects a commitment to upholding the dignity, freedom, and fraternity promised by the Indian Constitution.

Direction Highlights:

- **Phased Eradication of Manual Sewer Cleaning:** The Union Government is tasked with framing policies and issuing directions to eliminate manual sewer cleaning. This should also apply to work outsourced to contractors or agencies.
- **State-Level Implementation:** All States and Union Territories are directed to incorporate these guidelines into their own policies, ensuring they apply to municipalities and local bodies within their jurisdictions.
- **Comprehensive Rehabilitation:** The Union, State, and Union Territories are required to provide full rehabilitation, including employment opportunities, education for children, and skill training, to sewage workers and their families.
- **Increased Compensation for Sewer Deaths:** Compensation for sewer deaths is increased to ₹30 lakhs, with retroactive application. Victims' dependents who have not received this amount will be entitled to it.
- **Compensation for Disabilities:** Victims with disabilities will receive compensation, with a minimum of ₹10 lakhs, increasing to ₹20 lakhs for permanent disabilities rendering the victim economically helpless.
- **Accountability Mechanism:** Governments must establish a mechanism for accountability, including the cancellation of contracts and monetary penalties for sewer deaths during contractual or outsourced work.
- **Model Contracts:** The Union will create a model contract to ensure adherence to standards, and states will also adopt this model in awarding contracts.
- **National Survey:** A National Survey on manual scavenging will be conducted within one year, with modalities for its implementation developed within three months.
- **Scholarships for Dependents:** Scholarships will be set up to provide meaningful education to the dependents of sewer victims.
- **Involvement of NALSA:** The National Legal Services Authority (NALSA) will participate in consultations and help in disbursement models for compensation.
- **Committee Establishment:** State-level, district-level committees, and commissions will be set up in a time-bound manner to coordinate efforts.
- **Training and Education Modules:** Coordination and preparation of training and education modules for district and state level agencies will take place.
- **Information Portal:** A portal and dashboard will be developed to provide relevant information on sewer deaths, victims, compensation status, and rehabilitation measures.

3. Arbitrator's Eligibility Amid Unilateral Fee Revision Dispute

In *Chennai Metro Rail Limited v. Transtonnelstroy Afcons*, the Supreme Court of India has clarified that the unilateral revision of fees by an arbitral tribunal, though not permitted under the Arbitration and Conciliation Act of 1996, does not render the arbitrator ineligible based on Section 12 of the Act. The Court emphasised that only grounds specified in the Fifth and Seventh Schedules of the Act can be considered to determine an arbitrator's ineligibility, underscoring the importance of adhering to statutory provisions in arbitration proceedings.

Key Points from the Judgment:

- **Unilateral Fee Revision:** The Supreme Court acknowledged that arbitrators should revise their fees only in consultation with the parties involved and should not make unilateral decisions regarding fee adjustments. However, it clarified that a breach of this rule, as seen in this case, does not automatically render the arbitrator ineligible.
- **Statutory Ineligibility Grounds:** The Court reiterated that an arbitrator can only be considered ineligible based on grounds specified in the Fifth and Seventh Schedules of the

Arbitration and Conciliation Act, which must go to the root of the tribunal's jurisdiction and authority.

- **Challenging an Arbitrator:** Section 12 of the Act outlines the grounds for challenging an arbitrator. The Act's Fifth Schedule details the circumstances that create justifiable doubts about the independence or impartiality of arbitrators.
- **Objective Test of Bias:** The Supreme Court cited the UK Supreme Court's judgement in *Halliburton Company v. Chubb Bermuda Insurance Ltd.*, emphasising the application of an objective test to determine whether there is an appearance of bias. This test considers whether an informed, fair-minded observer would conclude that there is a real possibility of bias.

4. Dream11 v. Dream11

Sporta Technologies Pvt. Ltd. and Anr. v. Dreamz11 and Anr

The plaintiffs, who legally own the 'Dream11' trademark and the domain 'www.dream11.com', were distressed by the contesting defendants' use of the phonetically similar mark 'dream11'. The plaintiffs accused the defendants of blatantly copying their branding, website design, and even the use of cricketers' images to offer identical services.

The Delhi High Court ruled in favour of the fantasy sports app 'Dream11', observing that the contesting defendants, specifically 'Dream11', demonstrated a "clear and transparent intent" to emulate the plaintiffs.

Judgement: Considering the resemblances between the two marks, their identical service nature, and the potential confusion they could cause among consumers, Justice C. Hari Shankar confirmed that there was an infringement under Section 29(2)(b) of the Trade Marks Act, 1999. He further noted that the defendants not only copied the 'Dream11' trademark but also replicated the appearance and essence of their website, resulting in "passing off."

Test of Confusion: Utilising the benchmark set in the *Re: Pianotist Application*, Justice Shankar emphasised that confusion was highly likely between the two brands since they both operate within the fantasy gaming sphere.

This ruling exemplifies the critical importance of intellectual property rights in the digital age, where brand identity plays a significant role in business success. The similarity in names and branding, especially in the burgeoning fantasy sports industry, can lead to significant confusion for users. The court's decision underscores the urgency of addressing such concerns, ensuring that original brands are protected from potential imitators, thereby maintaining consumer trust and upholding ethical business standards.

5. 60K Compensation for a 13-hour Train Delay

Karthik Mohan v. Ministry of Indian Railways & Ors.

The complainant, serving as a Deputy Manager at Bosch Ltd, intended to travel from Ernakulam to Chennai for a significant meeting. The severe delay caused inconvenience to several passengers, including NEET aspirants and their parents. The complainant emphasised the railway's responsibility to timely inform and arrange alternatives for passengers during such situations. He initially sought a compensation of Rs. 5 Lakhs, alleging negligence and service deficiency by the railway authorities.

The Ernakulam District Consumer Disputes Redressal Commission instructed the Southern Railway to pay compensation to a passenger inconvenienced by a 13-hour delay of the Chennai-Alleppey Express.

The Commission, while highlighting the inefficiencies and frequent issues with the Indian Railways, stressed the importance of valuing a passenger's time. They empathised with the complainant's predicament, who had an essential professional commitment.

The railways responded that trains operate based on a pre-set schedule considering multiple factors. They mentioned that occasional unexpected factors like track maintenance or signal failures could necessitate route diversions. For this specific delay, the train's route was changed due to yard remodelling work at Arakkonam, Chennai. The railways also stated that they informed all reserved passengers about the delay through SMS.

The commission referred to the Apex Court's judgement in the case of North Western Railways & Ors. v. Sanjay Sukhla (2021), highlighting the railways' responsibility concerning negligence or deficiency in service.

Considering the unexpected delay and insufficient prior communication, the Bench concluded a clear deficiency in service. The Railways was deemed liable to compensate the complainant Rs. 60,000/- for the distress and inconvenience caused, along with covering the cost of proceedings.

6. Case of the Week

Subramanian Swamy v. Union of India (UOI)

Background:

The central issue in this case was the constitutional validity of sections 499 and 500 of the Indian Penal Code, 1860 (IPC). These sections deal with criminal defamation. Under these sections, defamation is punishable with imprisonment for a term which may extend to two years or with fine or with both.

Dr. Subramanian Swamy, along with other public figures, approached the Supreme Court challenging the constitutional validity of these provisions, contending that they violated the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution.

The Supreme Court upheld the constitutionality of sections 499 and 500 of the IPC. The Court observed:

Right to Reputation: The Court held that the right to reputation is an integral part of the right to life under Article 21. Therefore, it is not only the duty of the state to protect the freedom of speech and expression but also to protect the right to life and personal liberty of its citizens.

Balancing Rights: While freedom of speech and expression is essential, it is equally important to ensure that such freedom does not harm another individual's reputation. The Court found that sections 499 and 500 of the IPC are not excessive or disproportionate, and they serve to protect an individual's dignity and reputation.

No Chilling Effect: The Court did not find merit in the argument that criminal defamation would have a chilling effect on free speech. It noted that the provisions have adequate safeguards to prevent misuse, including the requirement of mens rea (guilty mind) for the offence.

The judgement in Subramanian Swamy v. UOI has significant implications:

It reinforced that while freedom of speech and expression is a fundamental right, it is not absolute and is subject to reasonable restrictions.

The decision upheld the right to reputation as an essential component of the right to life and personal liberty.

It brings attention to the need for balancing competing rights in a democracy.

7. Repeated PYQ

The objective of Section 138 of the Negotiable Instruments Act, 1881 is to promote the efficiency of banking operations and to ensure credibility in transacting business through cheques. Explain the statement with recent amendments.

Section 138 of the Negotiable Instruments Act, 1881 (NIA) has been instrumental in instilling faith and credibility in the banking system and commercial transactions in India. It deals with the offence of "dishonour of cheque for insufficiency, etc., of funds" and prescribes penalties for the drawer of a dishonoured cheque. This provision is geared towards ensuring that the drawer honours their commitment, thereby reinforcing trust in this form of negotiable instrument.

Objective of Section 138

The principal objective behind Section 138 is to infuse reliability and integrity into transactions that involve cheques. Cheques are widely used in various transactions, ranging from trade to the settlement of debts. The Section ensures that people do not misuse this banking instrument. If a cheque is dishonoured, the drawer can be penalised, which acts as a deterrent against issuing cheques without sufficient funds.

Recent Amendments

Several amendments have been introduced to make the provision more robust and effective. For instance, the Negotiable Instruments (Amendment) Act, 2018, introduced Section 143A, empowering the Court to direct the drawer to pay interim compensation to the complainant. Another example is Section 148, which permits the Appellate Court to order payment pending the appeal against the conviction. These amendments intend to reduce the undue advantage of long-drawn legal processes exploited by unscrupulous drawers.

Impact on Banking Operations

The robustness of Section 138 directly impacts the efficiency of banking operations. Banks rely on cheques as an important negotiable instrument for their daily operations. A strong legal framework that penalises defaulters ensures that cheques continue to be a reliable tool for banks. Moreover, these legal safeguards enable banks to extend various forms of credit to individuals and businesses, knowing there is a legal recourse available.

Section 138 of the NIA plays a pivotal role in ensuring that cheques remain a reliable, efficient, and widely-accepted form of payment. The penalties act as a significant deterrent against the issuance of dishonoured cheques, thereby promoting credibility in transacting business. Recent amendments have further fortified this provision, enabling quicker resolutions and providing better legal remedies to the aggrieved parties. Consequently, this legal framework significantly contributes to the smooth functioning and reliability of India's financial and commercial systems.

In sum, the legal provisions under Section 138 and its recent amendments serve to maintain the integrity of the banking system and ensure that cheques, as a form of negotiable instruments, continue to play their role effectively in modern-day transactions.