

Weekly Update for Law optional UPSC
A mix of Conceptual, Current/Contemporary Topics

Date: 25th September-1st October, 2023

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For UPSC 2025

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1. Revolutionising Criminal Justice

In a landmark move, the Law Commission of India, headed by retired Karnataka High Court judge Ritu Raj Awasthi, has put forth recommendations allowing the registration of electronic First Information Reports (e-FIR) for specific cases. This progressive step is aligned with the Digital India mission and the National e-Governance Plan, aiming to streamline and digitise the criminal justice process.

Key Highlights:

- **E-FIR for Cognizable Offences:** The Commission has endorsed the registration of e-FIRs for all cognizable offences where the accused is unknown and for offences with a maximum punishment of three years where the accused is identified.

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- **Legislative Amendments:** The recommendation calls for amendments to various legal texts, including the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872, and the Information Technology Act, 2000.
- **Protection Against Wrongful Arrests:** The restriction of e-FIRs to less severe offences ensures alignment with the principle of the presumption of innocence and safeguards against police abuse.

Expert Opinions:

- **Sidharth Luthra, Renowned Criminal Lawyer:** "E-FIRs represent a modern approach to law enforcement and criminal justice. It's a balanced integration of technology ensuring ease of access while upholding the principles of justice."
- **NK Chakrabarti, Vice-Chancellor of the WB National University of Juridical Sciences:** "The adoption of e-FIRs is indicative of India's evolving legal landscape, adapting to the needs of a digital era while safeguarding constitutional rights."
- **Future Outlook:** As India journeys towards a more digital future, the e-FIR initiative stands as a testament to the country's ability to innovate while upholding the sanctity of its legal and constitutional framework. The recommendation of the Law Commission promises not just procedural efficiency but also enhanced accessibility, marking a significant milestone in India's criminal justice narrative.

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2. "Res Ipsa Loquitur" in Medical Negligence Cases

In a monumental judgement in CPL Ashish Kumar Chauhan v. Commanding Officer dated September 26, the Supreme Court of India affirmed the applicability of the Latin maxim "res ipsa loquitur" — which means "the thing speaks for itself" — in cases of medical negligence. The ruling emphasises that when negligence is evident, the burden of proof shifts to the hospital or healthcare providers involved.

- **Case Background:** The case concerned an ex-Indian Air Force official who contracted HIV following a blood transfusion at a military hospital. The Court held both the Indian Army and the Indian Air Force jointly and severally liable for the negligence, awarding the complainant a sum of Rs 1.5 crore as compensation.
- **Defining "Res Ipsa Loquitur":** Citing Charlesworth & Percy on Negligence (14th Ed. 2018), the Court explained that this principle arises upon proof of an unexplained occurrence that would not have happened without negligence on the part of someone other than the claimant, and the circumstances pointing to the defendant's negligence.
- **Prior Precedents:** The Court also referred to previous judgments such as V. Kishan Rao v Nikhil Super Speciality Hospital and the Nizam Institute of Medical Sciences case to underline the application of res ipsa loquitur in medical negligence cases. When a claimant demonstrates negligence on part of the hospital or doctors, the onus shifts to the healthcare providers to prove absence of negligence.
- **Caveats:** The Supreme Court cautioned against an uncritical application of res ipsa loquitur, citing cases like Martin F. D'Souza and Bombay Hospital and Medical Research Centre v Asha Jaiswal. It emphasised that the principle allows a permissive inference of fact, but does not automatically shift the legal burden onto the defendant.

3. "Doctrine of Severability" in Arbitral Awards

In a pivotal judgement, the Allahabad High Court affirmed the application of the "doctrine of severability" to arbitral awards. This doctrine enables the court to separate valid parts of an award from the invalid, given they are independent and the court does not substitute its own findings in place of the arbitrator's.

Key Takeaways:

- The doctrine of severability can be applied to arbitral awards, allowing the separation of the good from the bad. The valid claims should be capable of surviving independently.
- Arbitral findings cannot be substituted by the court, but findings based on conjectures and surmises can be set aside as they represent patent illegality.
- The court recognized that while coercion and duress can be alleged in commercial contracts, the burden of proof is heavy and must be validated with compelling evidence.

Background:

The dispute revolved around Hindustan Steel Works Construction Limited (HSCL) and its contract with NOIDA for the construction of flyovers. Issues arose after a report suggested an inflated cost,

leading to the suspension of work by HSCL. Subsequent disagreements concerning damages during the suspension period and price escalation led to the appointment of an arbitrator.

Legal Principles Discussed:

- **Doctrine of Severability:** Emphasising that the 1996 Arbitration Act does not prevent courts from applying this doctrine, the court clarified that while an award can't be modified, parts of it can be segregated and set aside, especially if they are distinct from the valid parts.
- **Coercion and Duress in Commercial Contracts:** The court opined that every allegation of duress or coercion in commercial contracts must be assessed on a case-to-case basis. The burden of proving these allegations is heavy and cannot be based on mere conjecture.

By upholding the "doctrine of severability", the Allahabad High Court has provided a pragmatic solution to situations where only a part of an arbitral award might suffer from illegality. This approach promotes the efficient resolution of disputes by ensuring that parties don't have to undergo the entire arbitration process afresh because of issues with specific parts of an award.

4. Trademarks Related to Food and Eateries

DOMINOS IP HOLDER LLC & ANR. v. MS DOMINICK PIZZA & ANR.

Delhi High Court emphasised that a "higher degree of care and caution" is essential when trademarks are associated with food items or eateries. The court underscored this principle while ruling in favour of the globally renowned brand, Domino's, in a trademark infringement lawsuit against an eatery named Dominick Pizza.

Key Points:

- Justice C. Hari Shankar underscored the critical need for caution to avoid consumer confusion and potential quality compromise, especially when renowned brands are involved.
- Dominick Pizza was permanently enjoined from using marks or names deceptively similar to those of Domino's.
- The Court directed Dominick Pizza to transfer the contentious domain names to Domino's and pay a sum of Rs. 6,57,564.20 for infringement.

Case Highlights:

The lawsuit stemmed from the alleged deceptive similarity between "Domino's Pizza" and "Dominick's Pizza". The court argued that from the viewpoint of an average customer with imperfect recollection, confusion was likely, exacerbated by the similarities in logos and the goods and services offered under these marks.

The Delhi High Court's judgement is a significant addition to the discourse on trademark infringements, particularly in the sensitive domain of food and eateries. It not only highlights the importance of safeguarding consumer interests but also underscores the need to protect the reputation and integrity of established brands from potential dilution or misappropriation.

5. Flipkart Held Liable for Unilateral Order Cancellation

Ganjam District Consumer Disputes Redressal Commission slapped a fine on e-commerce giant Flipkart for engaging in unfair trade practices. The case centred around Flipkart's unilateral cancellation of a consumer's order, shedding light on consumer rights in the booming e-commerce sector.

Key Developments:

- Mr. Gandhi Behera ordered Adidas shoes at a discounted rate on Flipkart, only for his order to be cancelled the next day without explanation or consent.
- Flipkart faced a Rs. 20,000 penalty, including compensation and litigation costs, for this unilateral action, deemed a breach of consumer rights.

Mr. Behera's frustrations represent a common concern among online shoppers: unexpected order cancellations. Flipkart's defence, pinning the blame on the third-party seller and its intermediary role, didn't hold water with the Commission.

Legal Standpoint: The Commission found Flipkart in violation of the Consumer Protection Act, 2019. Its unilateral order cancellation was a clear-cut case of deficiency in service and unfair trade practices.

The Ganjam District Commission's decision is a significant stride for consumer rights in the digital age. E-commerce platforms are under the scanner, highlighting the imperative for ethical, transparent practices in online retail.

6. Case of the Week

Novartis AG v. Union of India

The case of Novartis AG v. Union of India is a cornerstone case in the realm of Intellectual Property Rights, particularly concerning the pharmaceutical patent regime in India. The case centred on the patentability criteria for drugs under the Indian Patents Act, 1970, specifically focusing on Section 3(d) of the Act, which sets limitations on what can be considered an "invention." Novartis, a Swiss pharmaceutical giant, sought a patent for its cancer drug Glivec, but faced rejection from the Indian Patent Office. The Supreme Court's judgement had far-reaching implications for the pharmaceutical industry, public health, and India's obligations under international law.

Background:

Novartis AG applied for a patent for its drug Glivec (imatinib mesylate) in India. The drug was a new form of a known substance, imatinib. The Indian Patent Office rejected the application on various grounds, including the ground of lack of inventiveness as per Section 3(d) of the Indian Patents Act. Novartis challenged the decision before the Intellectual Property Appellate Board (IPAB) and subsequently in the Supreme Court.

Legal Framework:

- **Indian Patents Act, 1970:** Specifically Section 3(d), which lays down that mere discovery of a new form of a known substance that does not enhance the known efficacy of that substance is not patentable.
- **TRIPS Agreement:** Agreement on Trade-Related Aspects of Intellectual Property Rights, to which India is a signatory.

The Supreme Court ruled against Novartis, upholding the decision of the IPAB. The Court meticulously interpreted Section 3(d) and clarified that a new form of a known substance can only be patented if it has enhanced efficacy compared to the known substance. In this case, the Court found that Glivec did not satisfy the condition of enhanced efficacy over imatinib and thus was not an 'invention' under the Indian law.

Implications for Intellectual Property Rights

The judgement fortified India's strict patent regime, ensuring that only genuine inventions receive patents. This has substantial implications for the pharmaceutical industry, which often engages in 'evergreening' – a practice of making minor changes to existing drugs to extend the patent life.

7. Repeated PYQ

The "precautionary principle" and the "polluter pays principle" are parts of the environmental law of this country. Explain in the light of decided cases.

In environmental law, principles like the "precautionary principle" and the "polluter pays principle" have significantly influenced policy and legal frameworks in India. The jurisprudential basis for these principles stems from the broader international legal doctrine, tailored to suit the domestic needs and complexities of India's environmental landscape.

Precautionary Principle

The precautionary principle articulates that if an action has the potential to harm the public or the environment, the burden of proof falls on those advocating for the action, rather than those opposing it. This principle has been significantly discussed in Indian case law.

Vellore Citizens Welfare Forum v. Union of India

In this landmark case, the Supreme Court held that the precautionary principle and the polluter pays principle are part of the environmental law of India. The Court stated that these principles have evolved to achieve 'sustainable development'. The Court also pointed out that the lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Polluter Pays Principle

According to the "polluter pays principle," the entity responsible for pollution is obligated to bear the cost of its containment, prevention, and consequent damage. This principle aims to deter entities from environmental degradation by imposing financial and legal liabilities.

Policy Implications

The adoption and implementation of these principles have led to significant policy shifts. Numerous environmental regulations, such as the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, have been influenced by these principles. These legislations embody the ethos of the precautionary principle by setting forth stringent standards for industrial effluents and emissions.

The precautionary principle and the polluter pays principle serve as the bedrock of environmental jurisprudence in India. Their recognition by the Supreme Court in landmark judgments has fortified their legal sanctity and policy relevance. By serving as touchstones for judicial review and legislative action, these principles contribute to a robust and adaptive framework for environmental governance in India.

