

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

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1. Meeting to Eradicate Dravidian Ideology

In a notable judgement that underscores the essence of India's multifaceted identity, the Madras High Court has taken a stand against the eradication of ideological diversity. In the case titled **Magesh Karthikeyan v The Commissioner of Police**, a petitioner sought the court's permission to conduct a meeting aimed at eliminating "Dravidian" ideology and fostering "Tamizhan" coordination. This request came on the heels of previous incidents where meetings had been held with the purpose of eradicating "Sanatana Dharma," which had drawn criticism due to the lack of police action against the provocative speeches delivered by influential figures.

The court, however, emphasised that India's identity is characterised by the coexistence of a multitude of ideologies and that no one has the right to hold meetings with the objective of annihilating any of them. Justice G Jayachandran pointed out the danger of persons in positions of power exploiting their influence to create divisions among people on the basis of ideology, caste, or religion. The court instead recommended that those with authority should direct their efforts toward fighting social evils such as drug and alcohol abuse, corruption, and untouchability, which pose significant threats to society.

2. Conviction Without Overt Act Under Section 149 IPC

In a recent judgement that sheds light on the nuances of criminal law in India, the Supreme Court has offered a decisive interpretation of Section 149 of the Indian Penal Code (IPC). The case, titled **Parshuram v. State of MP**, has become a cornerstone for understanding the complexities of individual responsibility within a group dynamic. The court clarified that for conviction under Section 149 of the IPC, an individual does not need to commit an overt illegal act or be guilty of an illegal omission to be considered a member of an unlawful assembly.

This ruling draws from the Constitution bench judgement in **Masalti v. State of U.P.** where it was established that mere membership in an unlawful assembly, with a shared common object as defined under Section 141 of the IPC, is sufficient grounds for conviction. Section 142 further

stipulates that anyone who, knowing that an assembly is unlawful, intentionally joins or continues in it, can be considered a member of such an assembly.

The case emerged from a violent clash over a buffalo dispute, where the complainant was severely injured, and an individual named Madan was killed. Seven accused were initially found guilty by the trial court in 2005 of various charges, including murder, under different sections of the IPC, read with Section 149. This verdict was upheld by the Madhya Pradesh High Court in 2018, leading to the appeal to the Supreme Court by two of the accused, Parshuram and Jalim Singh.

While the appellants were not directly accused of assaulting the deceased, the evidence supported their membership in the unlawful assembly. The Supreme Court, therefore, found it unnecessary for them to have physically participated in the assault for their conviction.

3. NGT Calls for Urgent Action on Worsening Air Quality

In response to the alarming levels of pollution reflected in the Air Quality Index (AQI), the National Green Tribunal (NGT) has issued a directive to the Chief Secretaries of states experiencing 'severe,' 'very poor,' and 'poor' AQI levels. The principal bench, led by Chairperson Prakash Shrivastava, Justice Sudhir Agarwal, and Dr. A. Senthil Vel, initiated action based on the Central Pollution Control Board (CPCB) Air Quality Bulletins posted on their website.

The AQI readings from October 20 to November 01, 2023, indicate a dire environmental situation. Cities such as Hanumangarh, Fatehabad, and Hisar have reached a 'severe' level of air quality, while several others including Bahadurgarh, Biwani, Charkhi Dadri, Faridabad, Greater Noida, Kaithal, Noida, Rohtak, Sri Ganganagar, and the capital city of Delhi are suffering from 'very poor' air quality. Moreover, an extensive list of cities, including Amritsar, Ankleshwar, Baddi, and many others across the nation, have been categorised under the 'poor' AQI level.

Recognizing the gravity of the situation, the NGT has called for immediate remedial actions to prevent and control air pollution and improve air quality for residents. This decision reiterates the NGT's commitment to enforcing its previous directives aimed at ensuring clean air, as set out in a case registered following a 2021 news report by the Times of India concerning 102 cities.

4. Limited Scope of Appeal under Arbitration Act

The Delhi High Court, in a Division Bench decision involving Justices Manmohan and Mini Pushkarna, has reaffirmed the constricted scope of appellate intervention in arbitration matters. The bench dismissed an appeal filed by DCM Ltd. under Section 37 of the Arbitration and Conciliation (A&C) Act, emphasising that such appeals cannot be compared to the court's normal appellate jurisdiction.

The appeal contested a Single Bench judgement which had dismissed DCM Ltd.'s challenge to an Arbitral Award under Section 34 of the A&C Act. The appellant sought to revisit the evidence, which the court found was beyond the narrow confines permitted by Section 37.

The dispute originated from contracts made between the parties in the early 1990s, leading to arbitration where the Arbitrator awarded DCM Ltd. a refund of Rs.8.05 crores from the respondent. The contention arose over the Arbitrator's decision not to award interest on the sum, based on a 2005 letter from DCM's Chairman and MD at the time, Dr. Vinay Bharat Ram, which purportedly waived this right.

Challenging the Single Bench's endorsement of the Arbitrator's view, the appellant argued before the Division Bench that the 2005 letter's authenticity was questionable and that the Arbitrator's decision deviated from the explicit terms of the agreements that provided for interest in case of non-fulfillment of obligations by the respondents.

However, the court pointed out that the Arbitrator had conclusively determined the issue of the letter's authenticity and found that it had been voluntarily signed by Dr. Vinay Bharat Ram. Given these "plausible" findings, grounded in evidence, the Division Bench saw no reason to interfere and dismissed the appeal.

5. Zomato Directed to Compensate for Non-Veg Delivery

The District Consumer Disputes Redressal Commission-II in Jodhpur, Rajasthan, has ordered Zomato to pay Rs. 1 Lakh in compensation for delivering non-vegetarian food to a customer who had ordered vegetarian items, leading to mental anguish and religious sentiment offence.

Incident Overview: Mr. Shekhar, the complainant, used Zomato to order vegetarian items from McDonald's, specifically "Make Flurry Oreo and Pizza Make Puff," for Rs. 275.99, paid via Google Pay. Contrary to his order, he received non-vegetarian food, which upon reporting to Zomato, he was offered food coupons as compensation.

Legal Proceedings: The case was brought before the District Consumer Disputes Redressal Commission in Jodhpur following Zomato's acknowledged error and unsatisfactory resolution from the company's side.

Zomato's Defence: Zomato defended itself by claiming to be a mere facilitator between customers and restaurants, thus shirking responsibility for the mix-up in the order. They also challenged the jurisdiction of the Commission and the cause of action.

Commission's Findings: Upon review, the Commission found that Zomato had admitted to the error through Twitter communications with the complainant. The Commission observed that online platforms have a responsibility to ensure the quality and correctness of the goods being sold and delivered through their services. It rejected Zomato's contention of non-liability and emphasised that the facilitator role does not exempt the platform from ensuring accurate service delivery standards.

6. Case of the Week

Olga Tellis & Ors vs Bombay Municipal Corporation & Ors

Facts of the Case:

The petitioners in this case were persons who lived on the pavements and in slums in the city of Bombay (now Mumbai). The Bombay Municipal Corporation issued notices to the pavement dwellers ordering them to vacate the pavements or face eviction. The main reason given for this action was that the pavement dwellers caused public nuisance and were obstructing the traffic. The petitioners argued that the eviction would violate their constitutional right to livelihood as part of the right to life guaranteed by Article 21 of the Indian Constitution.

Issue: The key legal issue was whether the right to livelihood could be inferred from the right to life under Article 21 of the Constitution of India, and consequently, whether the eviction of the pavement dwellers was a violation of their constitutional rights.

Judgement: The Supreme Court of India, led by Chief Justice Y.V. Chandrachud, delivered the verdict. The Court held that the right to livelihood is indeed an integral part of the right to life as no person can live without the means of living, i.e., the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood.

However, the Court also recognized that the right to livelihood is not absolute and can be restricted by the state for serving a larger public interest. The Court observed that no person has the right to encroach upon public spaces like pavements and slums that can be cleared if the land is needed for public purposes.

The Supreme Court directed the Bombay Municipal Corporation to give reasonable notice to the pavement dwellers before eviction and to also ensure that whenever it is found feasible, the evictees are relocated to alternative sites. It was mandated that evictions should not make them worse off than they already are.

7. Repeated PYQ

Q.1: “An invention has to satisfy certain conditions in order to get a patent.” Examine critically the statement.

Legislative Framework

In India, the criteria for patentability are primarily governed by the Patents Act, 1970. The Act, along with the Patents Rules, 2003, outlines the essential conditions that an invention must satisfy to be patentable. This framework is consistent with international standards set forth by agreements such as the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights).

The Core Conditions for Patentability

Novelty:

An invention is novel if it is not part of the prior art. Prior art refers to everything related to that field of technology that has been publicly disclosed before the effective filing date of the patent application.

The novelty criterion prevents the patenting of knowledge that is already available and ensures that patents contribute new technical knowledge to the public domain.

Inventive Step or Non-Obviousness:

An inventive step exists if, for a person skilled in the art, the invention is not obvious in light of the prior art.

The nonobviousness requirement ensures that the patent is not granted for mere incremental improvements or trivial changes to existing technology.

Industrial Applicability or Utility:

An invention must be capable of being made or used in some kind of industry. It should have a practical application and must be reproducible.

This criterion prevents the patenting of inventions that are speculative or purely theoretical.

Critical Examination of Patentability Conditions

The patentability conditions act as a filter to ensure that only inventions that contribute significantly to technological progress are patented. However, these criteria are not without criticism or controversy.

Novelty: The assessment of novelty can be complex, especially when determining what constitutes the prior art. Issues arise with the dissemination of information in the digital age, where information is widespread and sometimes not easily categorized. Furthermore, the global nature of prior art can impose a significant burden on the inventor to search and ensure that the invention is new worldwide.

Inventive Step: The subjective nature of what is considered "non-obvious" to a person skilled in the art often leads to disputes and litigation. Different jurisdictions may apply varying standards for assessing the inventive step, leading to inconsistencies in patent grants. Moreover, the retrospective analysis of obviousness can be influenced by hindsight bias.

Industrial Applicability: The utility requirement is sometimes criticized for being too low a threshold, as most inventions could be said to have some utility. On the other hand, the necessity for industrial applicability can be a hurdle for inventions in new and emerging fields of technology where the practical application is not immediately apparent.

Balancing Act and Policy Considerations: Patent laws aim to balance the inventor's exclusive rights with the public interest. Overly broad patent criteria could lead to the granting of patents for trivial inventions, unduly hindering competition and innovation. Conversely, overly stringent criteria could discourage research and development, especially in areas where the cost and effort are substantial.

*In landmark cases such as **Diamond v. Chakrabarty (US)***, the Supreme Court upheld the patentability of a genetically modified bacterium, emphasizing a broad interpretation of what constitutes patentable subject matter. In contrast, in India, the *Novartis AG v. Union of India & Others* case brought clarity to the interpretation of the "efficacy" aspect within the inventive step requirement under Section 3(d) of the Indian Patents Act, which was pivotal in rejecting the patent application for the cancer drug Glivec.

Conclusion

The conditions for patentability are critical to maintaining a delicate balance between fostering innovation and protecting public interest. While they generally serve their purpose, the interpretation and application of these criteria are often subjects of legal contention. The dynamic nature of technology and society necessitates a constant re-evaluation of these criteria to ensure that the patent system remains fair, robust, and reflective of contemporary values and needs.