

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

Date - 9th - 15th April 2023

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1. Termination of treaty under VCLT - Major Provisions and cases

The Vienna Convention on the Law of Treaties (VCLT) provides for several provisions for the termination of treaties. Here are some of the most important provisions and cases related to treaty termination under the VCLT:

Article 42 - Termination or Suspension of the Operation of a Treaty as a Consequence of its Breach

1. This provision states that if a party to a treaty has materially violated or breached the treaty, the other parties may invoke the breach as a ground for terminating or suspending the operation of the treaty. One notable case where this provision was invoked is the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention). In 2019, Bolivia terminated its participation in the ICSID Convention, citing the alleged violation of the treaty by the organization.

Article 60 - Termination or Suspension of the Operation of a Treaty by Consent of the Parties

2. This provision allows the parties to a treaty to agree to terminate or suspend the operation of the treaty. One notable case where this provision was invoked is the 1972 Anti-Ballistic Missile Treaty (ABM Treaty) between the United States and the Soviet Union. In 2002, the United States unilaterally withdrew from the treaty, but both parties acknowledged that the treaty was terminated by mutual agreement.

Article 62 - Fundamental Change of Circumstances

3. This provision allows a party to a treaty to terminate or withdraw from the treaty if there has been a fundamental change in circumstances since the treaty was concluded, and the change of circumstances was not foreseen by the parties. One notable case where this provision was invoked is the 2019 Intermediate-Range Nuclear Forces Treaty (INF Treaty) between the United States and Russia. The United States cited Russia's violation of the treaty as a fundamental change of circumstances, leading to the U.S. withdrawal from the treaty.

Article 64 - Emergence of a New Peremptory Norm of General International Law (Jus Cogens)

4. This provision allows a treaty to be terminated if it conflicts with a peremptory norm of general international law (jus cogens). One notable case where this provision was invoked is the 1978 Treaty on Friendship, Cooperation and Mutual Assistance between the Soviet Union and

Afghanistan. In 1980, the Soviet Union invaded Afghanistan, and the Afghan government invoked the principle of jus cogens to terminate the treaty.

2. Contributory negligence under Tort Laws in india

Contributory negligence is a legal doctrine under Indian tort law that refers to the situation where the plaintiff's own negligence or fault contributes to their injury or damage. It means that the plaintiff's own conduct or actions are partly responsible for the harm they have suffered.

Under the principle of contributory negligence, if the plaintiff is partially responsible for their injury or damage, their recovery may be reduced proportionately. In other words, the amount of compensation the plaintiff can receive from the defendant may be reduced by the percentage of their own fault or negligence. The doctrine of contributory negligence is based on the idea that individuals have a responsibility to exercise reasonable care and caution to protect themselves from harm. If the plaintiff fails to take reasonable care for their own safety and contributes to their injury or damage, they should not be able to fully recover damages from the defendant.

It is important to note that the application of contributory negligence is fact-specific and depends on the circumstances of each case. Courts will consider the conduct of both the plaintiff and the defendant in determining the extent to which each party contributed to the harm suffered by the plaintiff.

One recent case that dealt with the issue of contributory negligence is the 2020 case of **National Insurance Company Limited v. Pranay Sethi**. In this case, the Supreme Court of India held that the principle of contributory negligence should be applied in motor accident cases where the plaintiff is also at fault. The court stated that the plaintiff's negligence should be considered in determining the compensation to be awarded.

Another recent case is the 2018 case of **Sudhir Gopi v. Indira Gandhi National Open University**. In this case, the Delhi High Court held that the principle of contributory negligence applies when the plaintiff's own negligence contributes to the injury or damage suffered by them. The court stated that the plaintiff cannot completely absolve themselves of their responsibility and should be held partially liable for the damages.

Under Indian law, contributory negligence is an important consideration in determining liability and damages in tort cases. It is important to note that contributory negligence is different from comparative negligence, which is a legal concept that apportions fault between the parties based on their degree of negligence. In contrast, contributory negligence completely bars the plaintiff from recovering damages if they are found to have contributed to their own harm.

3. Doctrine of Legitimate Expectation in India

The doctrine of legitimate expectation is a significant aspect of administrative law, particularly in the field of public law. It has evolved as a judicial tool to ensure fairness, reasonableness, and non-arbitrary actions by public authorities. This doctrine safeguards the rights of individuals who have a reasonable expectation of

receiving a particular treatment or benefit from a public authority based on past practice, express promises, or representations made by the authority.

Origin and Evolution of the Doctrine of Legitimate Expectation

The doctrine of legitimate expectation first emerged in the case of *Schmidt v. Secretary of State for Home Affairs* (1969), where Lord Denning stated that an individual might have a legitimate expectation of being consulted before a decision is made that affects them and gradually found its way into the Indian legal system. The Indian judiciary embraced this doctrine to ensure fairness and reasonableness in administrative actions, drawing inspiration from the principles of natural justice and equity.

In India, the doctrine of legitimate expectation was first recognized in the case of *Navjyoti Co-operative Group Housing Society Ltd. and Others v. Union of India and Others* (1992).

Since then, the Indian judiciary has been actively applying this doctrine in various cases, interpreting and expanding its scope and application to ensure fairness in administrative actions.

Scope of the Doctrine of Legitimate Expectation

The doctrine of legitimate expectation encompasses both procedural and substantive aspects of administrative law, ensuring that public authorities act fairly, reasonably, and consistently in their dealings with individuals.

- Procedural Legitimate Expectation

Procedural legitimate expectation arises when an individual has a reasonable expectation of being afforded a fair hearing or consultation before a decision is made that adversely affects their interests. The primary purpose of procedural legitimate expectation is to ensure that public authorities adhere to the principles of natural justice and provide individuals with an opportunity to present their case.

Case example: In the case of **M. P. Oil Extraction v. State of M. P. (1997)**, the Supreme Court of India held that the doctrine of legitimate expectation is a part of the principle of *audi alteram partem* (hear the other side) and ensures that individuals have a fair opportunity to be heard before their rights or interests are adversely affected.

- Substantive Legitimate Expectation

Substantive legitimate expectation arises when an individual has a reasonable expectation of receiving a specific benefit or treatment based on an express promise, representation, or past practice by a public authority. In such cases, the courts may direct the public authority to fulfill the legitimate expectation or provide adequate reasons for not doing so.

Case example: In the case of **Union of India v. Hindustan Development Corporation and Others** (1993), the Supreme Court of India recognized the doctrine of substantive legitimate expectation and held

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that when a public authority has made a representation to an individual, it should not arbitrarily change its decision without providing adequate reasons.

Conditions for the Application of the Doctrine

For the doctrine of legitimate expectation to be applicable, certain conditions must be fulfilled:

- Legitimate Expectation Must Be Reasonable

The expectation must be reasonable and based on a clear and unambiguous representation, promise, or past practice. Vague or uncertain promises, or expectations based on mere hopes, are not sufficient to invoke the doctrine of legitimate expectation.

Case example: In the case of **Food Corporation of India v. Kamdhenu Cattle Feed Industries (1993)**, the Supreme Court of India held that the doctrine of legitimate expectation would not apply in cases where the expectation is based on a vague or uncertain representation.

- The Authority Must Have the Power to Fulfill the Expectation

The public authority must have the legal competence and power to grant the expected benefit or treatment. The doctrine of legitimate expectation cannot be invoked to compel a public authority to act beyond its statutory powers.

Case example: In the case of **Sethi Auto Service Station v. DDA (2009)**, the Delhi High Court held that the doctrine of legitimate expectation could not be used to force the Delhi Development Authority (DDA) to allot land for the development of a petrol pump, as the DDA had no legal authority to do so.

- Public Interest Considerations

The fulfillment of a legitimate expectation must not conflict with the public interest or the broader policy objectives of the public authority. Courts may deny the enforcement of a legitimate expectation if it would lead to a result that is contrary to the public interest.

Case example: In the case of **Reliance Airport Developers (P) Ltd. v. Airports Authority of India (2006)**, the Supreme Court of India held that the doctrine of legitimate expectation must yield to public interest considerations, and the court cannot enforce a legitimate expectation that is against public interest or policy.

Grounds for Judicial Review of Doctrine

The courts can review the actions of public authorities on the following grounds in the context of the doctrine of legitimate expectation:

- a) **Illegality**: If the public authority acts beyond its statutory powers or fails to exercise its discretion in accordance with the law.
- b) **Irrationality**: If the public authority's decision is so unreasonable that no reasonable person could have arrived at such a decision.
- c) **Procedural Impropriety**: If the public authority fails to follow the required procedures or violates the principles of natural justice.

Remedies

If the courts find that a public authority has acted in violation of the doctrine of legitimate expectation, they may provide the following remedies:

- a) Quashing the decision: The court may quash the decision of the public authority and direct it to reconsider the matter in light of the legitimate expectation.
- b) Issuing a mandatory order: The court may issue a mandatory order directing the public authority to fulfill the legitimate expectation or provide a valid reason for not doing so.
- c) Awarding damages: In exceptional cases, the court may award damages to the aggrieved individual for the loss suffered due to the breach of their legitimate expectation.

Conclusion

The doctrine of legitimate expectation plays a vital role in promoting fairness, reasonableness, and transparency in the functioning of public authorities under Indian law. The Indian judiciary has been instrumental in interpreting and applying this doctrine to ensure that the rights and interests of individuals are protected against arbitrary administrative actions. While the doctrine has evolved significantly over the years, it continues to balance individual rights and public interest, contributing to the development of a robust and responsive administrative law framework in India.

4. Data Privacy and Protection in the Indian Context - Data Protection Bill

India, as one of the world's largest digital markets, has been working on establishing a comprehensive legal framework for data privacy and protection. The primary legislation governing this area is the Information Technology Act (IT Act) of 2000, which addresses various aspects of electronic communication and e-commerce, including data protection. However, the IT Act has been criticized for its lack of specific provisions addressing data privacy in the context of emerging technologies and the exponential growth of data generation.

Recognizing the need for a more robust data protection regime, the Indian government initiated the development of a new data protection law. The Personal Data Protection Bill (PDPB), first introduced in 2019 and still under parliamentary review as of 2021, is set to become the primary legislation governing data privacy and protection in India. The PDPB aims to bring India's data protection standards in line with international best practices, such as the European Union's General Data Protection Regulation (GDPR).

Here are some key aspects of the PDPB in the Indian context:

1. **Personal and Sensitive Data:** The PDPB categorizes data into personal data, sensitive personal data, and critical personal data. Personal data refers to any information relating to an individual, while sensitive personal data includes information such as financial data, health data, and biometric data. Critical personal data, although not explicitly defined in the bill, is expected to cover data related to national security or strategic interests.
2. **Data Localization:** The PDPB proposes data localization requirements, mandating that a copy of personal data be stored on servers located within India. Sensitive personal data may be transferred outside India under specific conditions, while critical personal data must be stored and processed exclusively within the country.

3. **Data Protection Authority (DPA):** The PDPB proposes the establishment of an independent regulatory authority, the Data Protection Authority of India, responsible for implementing and enforcing the provisions of the bill. The DPA will have the power to investigate data protection violations, impose penalties, and issue guidelines and best practices for data protection.
4. **Data Privacy Principles:** The PDPB introduces several key principles governing data processing, such as notice, consent, purpose limitation, data minimization, storage limitation, and data accuracy. These principles align with international data protection standards and aim to ensure that data is processed transparently, fairly, and securely.
5. **Data Subject Rights:** The PDPB grants individuals various rights concerning their personal data, including the right to access, correct, erase, and restrict the processing of their data. These rights empower individuals to exercise greater control over their personal information and hold data controllers accountable for their data processing practices.
6. **Penalties and Enforcement:** The PDPB provides for strict penalties in cases of data protection violations, with fines ranging from 2% to 4% of a company's annual turnover or up to 15 crores INR (approximately 2 million USD), depending on the severity of the violation. The bill also establishes a framework for the investigation and adjudication of data protection offenses.

The Personal Data Protection Bill, once enacted, will significantly impact India's data privacy landscape and bring the country closer to global data protection standards. The legislation will have far-reaching implications for businesses, government agencies, and individuals, necessitating a thorough understanding of the new rules and ensuring compliance with the evolving data protection regime.

5. RTI Act - Recent important judgments

The Right to Information Act (2005) is an essential legislation in India that ensures transparency and accountability in the functioning of government agencies. The Act empowers citizens to access information held by public authorities, subject to certain exceptions

1. **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal (2019):** In this landmark judgment, the Supreme Court held that the office of the Chief Justice of India falls under the purview of the RTI Act. The Court ruled that transparency does not undermine judicial independence and that the right to information and the right to privacy are two sides of the same coin.
2. **Anjali Bhardwaj and Ors. v. Union of India and Ors. (2021):** In this case, the Supreme Court directed the central and state governments to fill vacant positions in information commissions and ensure their efficient functioning. The Court emphasized that the timely disposal of RTI applications is essential for the effective implementation of the Act.
3. **Reserve Bank of India v. Jayantilal N. Mistry (2015):** The Supreme Court held that the Reserve Bank of India (RBI) is bound to disclose information about banks and financial institutions under the RTI Act. The Court observed that the RBI cannot withhold information under the pretext of fiduciary relationships with banks, as transparency is crucial for the functioning of a democratic institution like the RBI.

4. **Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi (2012):** The Supreme Court ruled that information pertaining to the selection process for public posts, including the marks obtained by candidates and the criteria for selection, must be disclosed under the RTI Act.
5. **Thalappalam Ser. Coop. Bank Ltd. v. State of Kerala (2013):** The Supreme Court held that cooperative societies do not fall within the definition of "public authority" under the RTI Act, and therefore, they are not obliged to provide information under the Act. However, the Court clarified that if a cooperative society is substantially financed and controlled by the government, it would be considered a public authority.
6. **Girish Ramchandra Deshpande v. Central Information Commission (2012):** The Supreme Court ruled that personal information of public officials, including their assets and liabilities, cannot be disclosed under the RTI Act if it has no public interest and would amount to an invasion of privacy.
7. **R.K. Jain v. Union of India (2013):** The Supreme Court emphasized that the Central Information Commission and State Information Commissions should be manned by persons of eminence in public life with wide knowledge and experience in the fields of law, science, and technology, social service, management, journalism, and administration.

6. Case of the week: National Legal Services Authority v. Union of India (2014)

In the National Legal Services Authority (NALSA) v. Union of India case, the Supreme Court of India made a groundbreaking decision, recognizing the rights of transgender persons under the Constitution. The judgment marked a significant milestone in advancing the rights of transgender individuals in India, acknowledging their right to equality, dignity, and protection from discrimination.

The main issues addressed in this case were:

1. **Legal recognition of transgender persons:** The Supreme Court held that transgender persons have the right to self-identify as male, female, or the third gender, emphasizing that legal recognition of their gender identity is an essential part of their right to dignity and freedom under Articles 19 and 21 of the Constitution.
2. **Discrimination and equality:** The Court observed that transgender persons have been subjected to discrimination and marginalization for a long time. It held that discrimination on the basis of gender identity violates the right to equality guaranteed under Article 14 of the Constitution. The Court stated that the state must take necessary steps to ensure that transgender persons are not discriminated against and are provided with equal opportunities in all spheres of life.
3. **Inclusion in social welfare schemes:** The Supreme Court directed the central and state governments to include transgender persons in various social welfare schemes, such as education, healthcare, and employment opportunities. This inclusion aimed to help transgender individuals overcome social and economic disadvantages and attain a better quality of life.
4. **Reservation in education and employment:** The Court held that transgender persons are entitled to reservations in education and employment opportunities, as they belong to the socially and economically backward classes. The Court directed the governments to treat them as a socially and educationally backward class and extend reservation benefits accordingly.

5. **Legal measures to combat discrimination and violence:** The Supreme Court directed the central and state governments to take appropriate legal and administrative measures to prevent discrimination, harassment, and violence against transgender persons. The Court also emphasized the need to create public awareness about transgender rights to reduce social stigma and discrimination.

The NALSA judgment was a significant step in advancing the rights of transgender persons in India. By recognizing their right to self-identify their gender, guaranteeing them equal protection under the law, and ensuring their inclusion in social welfare schemes, the Court reaffirmed the principles of constitutionalism and the protection of fundamental rights for all citizens, irrespective of their gender identity.

7. Jus Cogens under International Law

Jus cogens is a fundamental principle of international law [VCLT] that refers to norms that are considered to be of such importance that they cannot be violated by any state. In other words, these norms are considered to be non-derogable, meaning that they cannot be set aside, even by agreement between states. This article will provide an overview of jus cogens under international law, including its historical background, characteristics, examples, and enforcement.

- **Historical Background of Jus Cogens**

The concept of jus cogens has its roots in natural law theory, which holds that certain moral principles are inherent in the nature of human beings and the universe. However, the modern concept of jus cogens emerged after World War II, as part of the effort to establish a rules-based international order. Jus cogens was first recognized in the 1969 Vienna Convention on the Law of Treaties, which states that a treaty is void if it conflicts with a peremptory norm of general international law.

- **Characteristics of Jus Cogens**

There are three main characteristics of jus cogens norms:

1. **Non-derogability:** Jus cogens norms cannot be waived or set aside by treaty or other agreement between states.
2. **Universality:** Jus cogens norms apply to all states, regardless of whether they have ratified specific treaties or not.
3. **Peremptory norm:** Jus cogens norms are considered to be fundamental to the international legal system and cannot be overridden by other norms or principles.

- **Examples of Jus Cogens Norms**

There are several norms that are widely recognized as jus cogens, including:

1. **Prohibition of genocide:** The Genocide Convention, adopted by the UN in 1948, defines genocide as any of a number of acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The prohibition of genocide is considered to be a peremptory norm of international law.
2. **Prohibition of torture:** The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN in 1984, defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for a specific purpose. The prohibition of torture is also considered to be a peremptory norm.

3. **Right to self-determination:** The right to self-determination is enshrined in the UN Charter and in several other international instruments. It is widely recognized as a jus cogens norm, as it is seen as fundamental to the protection of human rights and to the maintenance of peace and security.
4. **Prohibition of slavery:** The prohibition of slavery and the slave trade is recognized as a peremptory norm of international law, as it is considered to be fundamental to the protection of human dignity and human rights.

- **Enforcement of Jus Cogens Norms**

Jus cogens norms are binding on all states, and states have an obligation to respect and uphold them. International organizations such as the International Court of Justice and the International Criminal Court have a role to play in enforcing jus cogens norms, and individuals and groups can also seek redress for violations of jus cogens norms through domestic and international legal channels. However, there are also challenges in enforcing jus cogens norms, including the reluctance of some states to recognize and abide by them.

Jus cogens is a crucial concept in international law, as it reflects the fundamental values and principles that underpin the international legal system. The recognition and enforcement of jus cogens norms is essential to the protection of human

8. Absolute Liability principle: Need and Impact

The absolute liability principle in India is a legal concept that evolved from the Indian Supreme Court's landmark judgment in the case of *M.C. Mehta v. Union of India* (1987). This principle imposes strict and absolute liability on entities involved in hazardous activities, without considering any defenses such as reasonable care or foreseeability. The Supreme Court developed this principle to address the shortcomings of the English common law rule of strict liability laid down in *Rylands v. Fletcher* (1868), which had several exceptions and defenses.

The Court's reasoning for establishing the absolute liability principle was based on several key factors:

1. **Inadequacy of the strict liability rule:** The strict liability rule, as laid down in *Rylands v. Fletcher* (1868), was found to be insufficient for the needs of a modern, industrialized society. The rule had several defenses and exceptions, which often limited the liability of entities involved in hazardous activities. The Supreme Court acknowledged that the strict liability rule did not adequately address the concerns arising from hazardous enterprises, and thus, a new principle was required.
2. **Growing industrialization and hazardous activities:** With rapid industrialization, the number and scale of hazardous activities had increased significantly. The Court recognized the potential for widespread harm caused by such activities and believed that a higher standard of liability was necessary to ensure the safety and well-being of the public.

The absolute liability principle has significantly impacted the tort laws of India in the following ways:

1. **Strict and absolute liability:** Unlike the strict liability rule under Rylands v. Fletcher, the absolute liability principle does not provide any defenses, such as an act of God, a third-party act, or the plaintiff's consent. Therefore, if an entity engaged in a hazardous activity causes harm, it will be held absolutely liable without any exception.
2. **Higher compensation for victims:** The Indian Supreme Court emphasized that the compensation awarded to the victims of hazardous activities should be correlated with the magnitude and financial capacity of the enterprise, ensuring that victims receive adequate compensation for the harm suffered.
3. **Deterrence for hazardous activities:** By imposing absolute liability, the principle serves as a deterrent for entities engaging in hazardous activities, as they must take extensive precautions and measures to avoid potential harm, or else face significant financial consequences.
4. **Encouragement of corporate social responsibility:** The principle of absolute liability encourages enterprises to prioritize social and environmental responsibilities by making them accountable for the harm their activities may cause, thus promoting the idea of corporate social responsibility.
5. **Environmental protection:** The absolute liability principle has been particularly instrumental in environmental tort cases, as it holds industries and corporations responsible for any environmental damage resulting from their hazardous activities.

In conclusion, the evolution of the absolute liability principle by the Indian Supreme Court has brought about a significant shift in the country's tort laws, making industries and corporations more accountable for the harm caused by their hazardous activities. This has led to increased deterrence, more substantial compensation for victims, and a greater emphasis on environmental protection and corporate social responsibility.

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