

Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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Bharatiya Nyaya Sanhita (BNS) Receives Presidential Assent

The introduction of the Bharatiya Nyaya (Second) Sanhita (BNS) represents a significant overhaul of India's criminal laws. Here is a summary of the major changes introduced by BNS:

- **Repealing the IPC:** BNS will replace the 163-year-old Indian Penal Code (IPC), pending notification by the Central government.
- **Passage in Rajya Sabha:** The BNS, along with two other bills to replace the Code of Criminal Procedure and the Indian Evidence Act, was passed in the Rajya Sabha through a voice vote.
- **Community Service as Punishment:** BNS introduces community service as a form of punishment under Section 4 for various offenses, such as attempting suicide, defamation, misconduct in public by a drunken person, and failure to appear at a specified place and time.
- **Offences Against Women and Children:** BNS consolidates offences against women and children into a dedicated chapter, "Of Offences Against Woman and Child Of Sexual Offences."
- **Marital Rape with Minor Wife:** While the IPC allowed marital rape with a wife aged 15 or older, BNS raises the age to 18, aligning with a previous Supreme Court ruling.
- **Sexual Intercourse by Deceitful Means:** BNS introduces sexual intercourse by deceitful means as an offence under Section 69.
- **Enhanced Punishment for Gangrape of Minors:** BNS mandates life imprisonment or the death penalty for those who gangrape a woman under 18 years of age.
- **Publishing Trial Court Proceedings Relating to Sexual Offences:** Publishing any matter related to proceedings before a court regarding sexual offences without the court's permission is an offence under Section 73.
- **Section 377 Deleted:** BNS eliminates Section 377, which previously criminalised consensual carnal intercourse. Forced intercourse with an adult male and bestiality are also no longer offenses.

- **Adultery Omitted:** Following a Supreme Court judgement, the offence of adultery has been deleted. However, Section 498, penalising enticing another man's wife, remains in the BNS.
- **Organised Crime:** BNS introduces organised crime under Section 111, with the death penalty as the maximum punishment if the crime results in death. The law defines organised crime and its syndicate.
- **Punishment for Organized Crime:** Punishments for organised crime include death or life imprisonment if it results in death, or imprisonment for not less than five years if it doesn't. Fines are also imposed.
- **Membership in Organized Crime Syndicate:** Being a member of an organised crime syndicate can lead to imprisonment for life and fines.
- **Petty Organized Crime:** BNS adds a category for petty organised crime, covering theft, snatching, cheating, unauthorised selling of tickets, and more, with imprisonment and fines as penalties.
- **Terrorist Act:** BNS introduces the offence of a "Terrorist Act" with a broad definition, including threats to economic security, monetary stability, and acts causing harm to the country's unity and integrity. Punishments include death or life imprisonment.
- **Act Endangering Sovereignty, Unity, and Integrity:** BNS penalises acts endangering the unity and integrity of India, with life imprisonment or up to seven years in prison for offences related to secession, armed rebellion, subversive activities, or separatist activities.

New Bill Reshapes Top Election Officials' Appointments

In a significant development, the President granted her assent to the Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service, and Term of Office) Bill 2023 on Thursday. This bill represents a substantial reform in the process of appointing top election officials in the country.

The bill, which replaces the 1991 Act, establishes a comprehensive mechanism for the appointment process and conditions of service for the Chief Election Commissioner (CEC) and Election Commissioners (ECs). It was passed by the Lok Sabha on December 21 and received approval from the Rajya Sabha on December 12. Its primary objective is to regulate the appointment, conditions of service, and term of office for these crucial positions within the Election Commission, while also outlining the procedure for the Commission's functioning.

Key provisions of the bill include the replacement of the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991. Under the new legislation, the President will appoint the CEC and ECs based on the recommendation of a selection committee. This committee will comprise the Prime Minister, a Union Cabinet Minister, and the leader of the opposition or the leader of the largest opposition party in the Lok Sabha. Even in the absence of a full committee, the recommendations will remain valid.

A search committee, led by the Law Minister, will propose a panel of names to the selection committee. Eligibility criteria for candidates include having held a position equivalent to the secretary to the central government. The bill also sets the salary and conditions of service for the

CEC and ECs to be equivalent to that of the cabinet secretary, a departure from the previous equivalence with a Supreme Court judge's salary.

Notably, the bill removes the Chief Justice of India from the selection committee. Earlier this year, a constitution bench of the Supreme Court ruled that election commissioners shall be selected by a committee comprising the Prime Minister, the leader of the opposition, and the Chief Justice, until Parliament frames a law prescribing the selection process.

It is worth noting that Article 324 of the Constitution of India mandates that the Election Commission shall consist of the Chief Election Commissioner (CEC) and a determined number of Election Commissioners (ECs), as determined by the President.

The Election Commission of India (ECI) plays a vital role in overseeing the compilation of electoral rolls and organising elections for Parliament, State Legislatures, as well as the offices of the President and Vice-President. The Constitution stipulates that the President must appoint the CEC and ECs in accordance with provisions outlined in an Act of Parliament.

In 1991, the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act was enacted, establishing the remuneration of the Chief Election Commissioner (CEC) and Election Commissioners (ECs) at a level equivalent to that of a Supreme Court judge. However, the Act did not address the procedure for their appointment, leaving this matter to be determined by the President.

Delhi High Court Upholds 2G Judgment as "Change in Law"

Indus Towers Limited v. Sistema Shyam Teleservices Limited

In a recent ruling, the Delhi High Court dismissed a Section 34 petition under the Arbitration Act, emphasising that the 2G judgement, which quashed the First-Come-First-Serve (FCFS) policy, constituted a significant "change in law" for the grant of spectrum/licences. The court rejected the argument that it could set aside a majority Award and uphold a minority Award, stating that doing so would amount to modifying the Award, which is impermissible under the Act. The case revolved around a Master Services Agreement between Indus Towers Limited and Sistema Shyam Teleservices Limited, with the latter claiming that the 2G judgement frustrated the agreement. The court found no grounds to interfere with the Award, leading to the petition's dismissal.

Delhi High Court Dismisses Copyright Plea Against 'Shamshera'

BIKRAMJEET SINGH BHULLAR v. YASH RAJ FILMS PRIVATE LIMITED & ORS.

In a significant legal development, the Delhi High Court has dismissed an application for an interim injunction against the streaming and broadcasting of the film "Shamshera." The suit was filed by Bikramjeet Singh Bhullar, who claimed that the movie infringed upon his copyrighted script titled "Kabu na chhadein Khet."

Justice Jyoti Singh's ruling emphasised a fundamental principle of copyright law, stating that there can be no copyright protection for ideas and themes. Importantly, the judge clarified that this decision would not prejudice the trial or the final adjudication of Bhullar's copyright infringement suit based on its merits.

"In the present case, as noted above, the ideas in the script of the Plaintiff cannot be given copyright protection and more so in the stock elements. A comparison of the script and the impugned film does not leave an impression that one is a substantial copy of the other," the court asserted.

The court further added, "There can be no doubt that writers must be given their due. However, Plaintiff has been unable to make out a prima facie case of copyright infringement, and thus no relief can be granted in favour of the Plaintiff injuncting the Defendants from continuing with the telecast of their film on the OTT Platforms."

As part of the ruling, the court instructed the film's makers and producers, including Yash Raj Films Private Limited, to submit an affidavit disclosing their current revenues generated from the telecast of the film.

Justice Singh underlined that certain themes and elements, such as father-son relationships with striking resemblances, the use of children, birds, hot oil, horses, underground tunnels, and more, are common in numerous Bollywood movies. Agreeing with Bhullar's claim would effectively grant a monopoly over these ideas, which runs contrary to a Supreme Court judgement in R.G. Anand v. Delux Films and Others.

The court also pointed out that the differences between Bhullar's script and the film outweighed the alleged similarities. Furthermore, the similarities themselves were deemed insufficient to establish a presumption of copyright infringement at the interim stage in favour of Bhullar.

The court concluded, "There is no uniqueness in these ideas or expression and in the words of the judgments of this Court, almost every author of fiction would conjure them as consequential concomitant effects, as a matter of common grasp and 'Scenes a Faire' which carry no copyright." This ruling reaffirms the legal principle that copyright protection extends to the expression of ideas but not the ideas themselves.

NGT Imposes Rs. 25,000 Cost on MoEFCC

The principal bench of the National Green Tribunal (NGT) has imposed a fine of Rs. 25,000 on the Ministry of Environment, Forest and Climate Change (MoEFCC) for its failure to provide concrete steps taken to prevent air pollution containing hazardous chemicals.

A bench consisting of Justice Sudhir Agarwal and Dr. A. Senthil Vel took action after the counsel representing MoEF&CC admitted that the response provided by the ministry was unclear and did not outline any effective measures to control air pollution. Despite repeated queries, the counsel

could not point to a single step taken by MoEF&CC to address the issue. In response to this vague and irrelevant reply, the NGT imposed the penalty on Respondent No. 1 (MoEFCC).

The NGT initiated the case suo moto based on a news article titled "Feeling anxious? Toxic air could be to blame," published in The Times of India in October. According to the article, long-term exposure to air pollution can lead to a higher risk of depression, anxiety, and respiratory disorders. The NGT noted that individuals exposed to polluted air may experience changes within the brain that affect emotions, increasing the likelihood of anxiety and depression.

In October, the NGT observed that the matter needed further examination, particularly concerning various chemical and physical components causing air pollution and their adverse effects on the human body's organs. Consequently, six respondents, including MoEF&CC, Central Pollution Control Board (CPCB), and the Indian Council of Medical Research (ICMR), were impleaded, and notices were issued.

The bench also highlighted that the CPCB had admitted the presence of several metals and polluted elements in the air, contributing to pollution. However, the CPCB had not taken effective steps to control and prevent air pollution. Moreover, the NGT found that the environmental compensation funds deposited with the CPCB were being diverted for unauthorised purposes. The tribunal demanded complete details of these funds, including their utilisation.

The NGT stressed that environmental compensation funds should not be diverted for activities beyond the CPCB's domain. It called this diversion a gross misuse and serious financial irregularity and questioned the CPCB's involvement in activities related to construction and repair of roads, which fall under the jurisdiction of local bodies.

The bench granted the CPCB one month to ensure that the funds deposited under the head of "Environmental Compensation" were not diverted or misused, emphasising that such actions amounted to misappropriation of funds.

In light of the vague response from MoEFCC regarding steps taken to prevent air pollution, the NGT imposed a fine of Rs. 25,000 on the ministry.

Case of the Week

Cadila Health Care Ltd. v Cadila Pharmaceuticals Ltd. (2001)

In the case of **Cadila HealthCare Ltd. v Cadila Pharmaceuticals Ltd. (2001)**, the dispute centred around the use of similar trademarks in the pharmaceutical industry. Following the restructuring of the Cadila Group, both parties were entitled to use "Cadila" in their corporate names. The plaintiff, Cadila HealthCare, held the trademark for the drug Falcipharum, marketed as Falcigo in India. A year later, Cadila Pharmaceuticals, the respondent, obtained permission to manufacture and market a drug called Falcitab, with "Fal" being a prominent element in its name.

Cadila HealthCare filed a lawsuit in the Vadodara District Court, arguing that Falcigo, which they had been producing and selling since 1996, contained Artesunate for treating cerebral malaria, while Falcitab, produced by the respondent, contained Mefloquine Hydrochloride. The plaintiff raised concerns about potential confusion between these drugs, which could be harmful as they were last resort medications.

Cadila Pharmaceuticals countered by stating that it was a common practice in the pharmaceutical industry to incorporate part of the disease's name into the drug's trademark, helping healthcare professionals identify the intended use of the product. They also highlighted that while Falcigo and Falcitab were Schedule H drugs, requiring a doctor's prescription, there was no chance of confusion as Schedule L drugs were not sold over the counter but only supplied to hospitals and clinics.

The District Court dismissed the interim application filed by the plaintiff, and an appeal to the High Court also failed. The Supreme Court, while refusing to interfere with the lower court's decision, laid out important principles for dealing with cases of infringement or passing off in the context of medicinal products. The Court emphasised the need for greater vigilance in such cases, noting that the likelihood of confusion should require a lesser quantum of proof due to the potential health risks involved.

The factors to be considered in such trademark disputes, as outlined by the Supreme Court, include:

1. The nature of the goods (including words, labels, and devices).
2. The degree of resemblance between the trademarks.
3. The nature of the marks themselves.
4. Similarity in the nature, character, and performance of the goods of the rival traders.
5. The class of purchasers, their level of education, intelligence, and the degree of care likely to be exercised in purchasing and using the goods.
6. The mode of purchasing the goods.
7. Any other relevant surrounding circumstances.

Repeated PYQ

Q:- By and large Lok Adalats have failed in achieving the objects for which they were created. Comment. Also suggest some measures to make this institution more effective.

Lok Adalats, which can be translated to “People's Courts,” were conceived as an alternative dispute resolution mechanism to provide speedy, economical, and amicable settlement of disputes. Enshrined under the Legal Services Authorities Act, 1987, their main objectives were to:

1. Relieve the burden on courts with burgeoning case backlogs.
2. Provide a forum for alternative dispute resolution to those who cannot afford lengthy court proceedings.
3. Ensure justice is dispensed quickly, amicably, and without costs.
4. Reinforce the traditional Indian ethos of amicable dispute resolution.

Several arguments can be advanced to support the contention that Lok Adalats have, by and large, failed to achieve these objectives:

1. **Nature of Cases Resolved:** Often, Lok Adalats have been criticized for taking up minor civil cases, leaving substantial and complicated cases for regular courts. This cherry-picking does little to reduce the significant backlog in the judicial system.
2. **Lack of Legal Rigor:** Given the informal nature of Lok Adalats, there's a possibility that legal principles might be overlooked in favor of speedy resolutions, compromising justice's quality.
3. **Overemphasis on Compromise:** Some critics argue that there's an overemphasis on compromise, sometimes at the cost of justice, especially when one party is more dominant.
4. **Inadequate Infrastructure and Training:** Lok Adalats often suffer from inadequate infrastructure, which can impede their functioning. Further, the presiding officers might not always have the requisite training to handle specific types of cases.

Measures to Enhance the Effectiveness of Lok Adalats

1. **Enhanced Training:** To ensure that the quality of justice isn't compromised, continuous training sessions for the members of Lok Adalats can be organized.
2. **Infrastructure and Technological Upgradation:** Enhanced technological support, especially in the form of e-Lok Adalats, can help in reaching a wider audience and ensuring smoother proceedings.
3. **Broadening Scope:** Instead of limiting themselves to minor cases, Lok Adalats should also be encouraged to take up substantial matters. This can be aided with expert guidance and collaboration.
4. **Public Awareness Campaigns:** Many remain unaware of the benefits and procedures of Lok Adalats. Awareness campaigns can help in increasing their reach and utility.
5. **Diversified Panels:** The panels of Lok Adalats can be diversified to include legal experts, social workers, and other professionals to ensure a holistic approach to dispute resolution.
6. **Incorporate Jurisprudential Principles:** Even though Lok Adalats focus on amicable settlements, it's essential to incorporate core jurisprudential principles to ensure justice isn't compromised.

Lok Adalats, as an institution, hold immense potential in addressing India's judicial delays and making justice accessible. However, for them to be effective, it's crucial to address the challenges they face and continuously adapt to meet the evolving needs of justice delivery. With strategic interventions and a commitment to their foundational principles, Lok Adalats can indeed realise their envisaged potential.