

## Weekly Update for Law optional UPSC

### A mix of Conceptual, Current/Contemporary Topics

Date: 28th - 3rd sep 2023

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### 1. Supreme Court Invokes Article 142 Powers to Reinstate English Lecturer in College

#### Case Background:

*The case of Vijaya Bhiku Kadam v. Mayani Bhag Shikshan Prasarak Mandal & Ors.* revolves around the employment of the appellant, a lecturer in English, at a college affiliated with Shivaji University, Kolhapur, Maharashtra. The appellant's appointment became a subject of dispute due to the College's handling of reservations and appointments for the Scheduled Caste category.

In 1993, an advertisement invited applications for two full-time lecturer positions—one in the open category and the other in the Scheduled Caste category. The University Selection Committee recommended three candidates, with the appellant ranking third. The first candidate, Ms. S.D. Patil was initially appointed to the Scheduled Caste category, but she did not join. Consequently, the appellant was appointed for one academic year.

Subsequently, further advertisements for the same post were issued, leading to complications. The fifth respondent also applied, leading to her eventual termination. The University and College Tribunal later ordered the reinstatement of the fifth respondent to her original post. However, due to a lack of approval for three full-time lecturers, the College requested that the appellant work part-time with reduced pay.

#### Court's Observations:

The Supreme Court observed that the appellant's predicament was due to the fifth respondent's lack of objection to the initial appointment and her participation in subsequent selection processes. The appellant was now ineligible for appointment elsewhere due to her age. The Court also noted that the selection process in which the appellant ranked first was never challenged by the fifth respondent.

In light of these circumstances, the Court invoked its inherent power under Article 142 of the Indian Constitution to continue the appellant's appointment on a full-time basis without displacing the fifth respondent. The Court ordered that the appellant should be placed immediately below the fifth respondent and the lecturer appointed for the Scheduled Caste category in the seniority list. Additionally, the State Government was directed to release necessary grant-in-aid for the appellant's salary, potentially by creating a supernumerary post.

The Supreme Court's invocation of Article 142 powers in this case serves as a reminder of the Court's authority to do substantial justice. It underscores the importance of fairness and the protection of individuals' rights, even when administrative errors occur. The Court's decision balances the interests of both the appellant and the fifth respondent, seeking to rectify the situation without causing undue harm to either party. This case highlights the significance of judicial discretion and the application of constitutional powers to uphold justice.

## **2. Demystifying the Principles of Certiorari Jurisdiction under Article 226**

In a recent landmark judgement, the Supreme Court of India has provided a comprehensive overview of the principles governing the issuance of a writ of certiorari under Article 226 of the Constitution. The judgement in the case of Central Council for Research in Ayurvedic Sciences v. Bikartan Das, authored by Justice J.B. Pardiwala, brings clarity to this essential legal concept.

### **High Court's Limited Role:**

The first principle underscored by the Supreme Court is that when a High Court issues a writ of certiorari under Article 226, it does not transform into an Appellate Tribunal. Unlike appellate bodies, the High Court refrains from reevaluating the evidence presented before the lower tribunal. It demolishes orders it considers without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. This principle underscores the fundamental distinction between review and certiorari.

### **Discretionary Nature of Jurisdiction:**

The second cardinal principle emphasises the discretionary nature of Article 226's extraordinary jurisdiction. Even when an action or order is identified as illegal and invalid, the High Court can choose not to overturn it. This discretion ensures that substantial justice prevails among the parties involved. Article 226 offers a unique remedy rooted in addressing legal injury, guided by discretion. It allows the High Court to weigh public interest and equity while rendering decisions, thus highlighting the innate flexibility in this jurisdiction.

### **Three Fundamental Propositions:**

The judgement reiterates the three fundamental propositions governing certiorari jurisdiction, as established in the case of Hari Vishnu Kamath v. Syed Ahmad Ishaque. These propositions include certiorari's role in correcting errors of jurisdiction, addressing illegal actions within the jurisdiction, and the High Court's supervisory, non-appellate role.

### **Exercise of Restraint:**

The Court emphasised that certiorari jurisdiction should be exercised judiciously. The High Court can refrain from issuing the writ if there is no miscarriage of justice, underlining the importance of restraint.

## **3. NCDRC Rules in Favour of Policyholder**

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In *Nirmala Devi vs Reliance Life Insurance Com*, the National Consumer Disputes Redressal Commission (NCDRC) has ordered Reliance Life Insurance Company to pay Rs 1 crore to the nominee of a deceased policyholder. The case involved the insurance company's rejection of an accidental death benefit claim, citing non-disclosure of a prior head injury. The NCDRC's ruling clarifies key legal aspects, including the status of nominees as consumers and the interpretation of non-disclosure in insurance policies.

### **Background:**

Nirmala Devi, the nominee of her deceased son, Vijay Kumar Verma, filed a complaint against Reliance Life Insurance Company. Vijay had purchased a Rs 1 crore life insurance policy and tragically passed away in a road accident soon after. The insurance company rejected the accidental death claim, alleging non-disclosure of a previous head injury sustained in a road accident. Nirmala Devi contested this rejection, initiating a consumer complaint with the NCDRC.

### **NCDRC's Key Findings:**

**Nominees as Consumers:** The NCDRC affirmed that nominees under insurance policies have consumer rights, even though they are not parties to the insurance contract. This legal clarification aligns with established principles.

**Non-disclosure Clarification:** The NCDRC clarified that the failure to disclose a prior hospitalisation due to a motor vehicle accident should not be equated with concealing a pre-existing illness or disease. They emphasised that the purpose of the medical examination during policy issuance was to inquire about pre-existing conditions.

**Comparison with LIC's Approval:** The NCDRC noted that another insurance company, Life Insurance Corporation of India (LIC), had approved a similar claim without objections. This fact suggested that the non-disclosure of the previous accident was not a valid reason for rejecting the claim.

**Section 45 of the Insurance Act:** The NCDRC rejected the insurance company's reliance on Section 45 of the Insurance Act, stating that the failure to disclose a prior hospitalisation did not fall under this section's provisions, which pertain to fraudulent conduct.

## **4. NGT Orders Compensatory Tree Plantation**

### **Subhash Mishra & Ors. v. State of Uttarakhand**

The National Green Tribunal (NGT) principal bench has directed the Border Roads Organization (BRO) to undertake the planting of 10,000 trees in Uttarakhand. This directive comes in response to environmental concerns raised during the construction of a strategically vital road from Simli to Gwaldam.

### **Environmental Violations Alleged**

The case involves allegations of environmental norm violations by the BRO during the construction of the Simli-Gwaldam road. These alleged violations included unauthorised tree cutting, muck dumping, and damage to the ecosystem, leading to water resource depletion and river width reduction due to muck disposal. The use of blasting techniques in hilly areas by the contractor was also cited as a violation of established norms, resulting in landslides.

### **NGT's Remedial Measures**

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The NGT, after careful consideration, found discrepancies between the permitted and actual numbers of felled trees. To address these environmental concerns, the NGT has ordered the BRO to plant 10,000 trees within one month in coordination with the District Forest Officer (DFO). The DFO will subsequently monitor the survival of these trees for three months and provide a report to the Registrar General of the Tribunal.

### **Prevention of Landslides**

In addition to tree planting, the NGT directed the District Magistrate to ensure that the BRO takes appropriate steps to prevent landslides by constructing protective structures. The District Magistrate will also report on incidents of landslides and actions taken to mitigate them during the intervening period.

## **5. Affirmative Action and the ICERD**

The recent US Supreme Court decision in *Students for Fair Admissions, Inc. v. Harvard College (SFFA)* and its implications for affirmative action in the United States have raised significant legal and policy questions. This comprehensive analysis will examine the Court's decision and its departure from acknowledging international human rights law, particularly the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Additionally, it will explore the potential for the Biden administration to utilise alternative legal and policy tools, centred around the ICERD, to advance racial equity in the face of an increasingly conservative Court and limited legislative prospects.

### **The Supreme Court's Shift on Affirmative Action**

In SFFA, the Supreme Court deviated from its previous stance on affirmative action, effectively overruling cases like *Grutter v. Bollinger*. *Grutter* had upheld the selective use of race in university admissions under the strict scrutiny standard, recognizing the compelling state interest of assembling a diverse student body. However, SFFA questioned the universities' practices and found their interests incoherent for strict scrutiny.

### **The Omission of International Human Rights Law**

One notable shift in SFFA was the omission of any acknowledgment of international human rights law, particularly the ICERD, which had been cited in Justice Ginsburg's concurring opinion in *Grutter*. The ICERD, ratified by the U.S. in 1994, obliges parties to promote racial equality through special measures.

### **The Disconnect with ICERD**

The Court's failure to consider the ICERD's principles is problematic, as it disregards the U.S.'s international legal obligation to implement such measures. These obligations are consistent with the ICERD's goal of guaranteeing the full and equal enjoyment of human rights and fundamental freedoms. Justice Ginsburg had emphasised that affirmative action in line with international human rights principles can redress equality deprivations and promote social well-being.

### **Breach of Treaty Obligations**

The Court's failure to acknowledge ICERD obligations makes the U.S. vulnerable to claims of breaching its duties under international law. While the treaty's disputes clause requires the U.S.'s specific consent for cases to be submitted to the International Court of Justice (ICJ), the country is

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still obligated to comply with the treaty, and treaty violations send troubling signals to international partners.

## 6. Case of the Week

### Rylands v. Fletcher (1868)

#### Facts of the Case

In 1865, the defendant, Thomas Fletcher, employed contractors to build a reservoir on his land in Lancashire, England. The reservoir was intended to supply water to his nearby mill. During the construction of the reservoir, the contractors discovered a series of disused mine shafts and passages beneath Fletcher's land that connected to neighbouring coal mines. Despite this discovery, construction continued, and the reservoir was completed.

In 1866, after heavy rainfall, the water in the reservoir burst through the mineshafts and flooded the nearby mines of the plaintiff, John Rylands. Rylands sued Fletcher for damages, claiming that the flooding was a direct result of the construction and maintenance of the reservoir.

#### Issues

##### The central issues before the court were:

1. Whether Thomas Fletcher could be held liable for the flooding of John Rylands' mines.
2. Whether a new principle of liability, distinct from negligence, should be recognized in cases of this nature.

#### Principles Established

##### The House of Lords, in its judgement, established several key principles:

**Strict Liability:** The court held that Fletcher was strictly liable for the damage caused by the escape of water from his reservoir. Unlike negligence, which requires proof of fault or wrongdoing, strict liability attaches simply because the defendant engaged in an inherently dangerous activity that resulted in harm to the plaintiff.

**Non-Natural User of Land:** The court defined the principle of strict liability as applicable to "the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes." This concept of non-natural use became a fundamental element in determining liability under the Rylands v. Fletcher rule.

**Escape:** The key element of liability in such cases is the "escape" of something from the defendant's land to the land of another. This "escape" need not be intentional or negligent; it simply means the unauthorised movement of something from the defendant's premises to another's.

**Foreseeability:** The court emphasised that foreseeability of harm is not a requirement for establishing liability under the rule in Rylands v. Fletcher. Even if the defendant could not foresee the harm, they would still be held liable if the conditions for strict liability were met.

**Defences:** The court recognized certain defences, such as an act of God, the plaintiff's own fault, and the consent of the plaintiff, as exceptions to strict liability.

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## 7.Repeated PYQ

**“Consideration need not be adequate, but it must be real or valuable.” Explain.**

Consideration is one of the fundamental elements of a valid contract under the Indian Contract Act, 1872. It is essential for the enforceability of a contract. The principle that "consideration need not be adequate, but it must be real or valuable" is a key aspect of contract law. This principle signifies that the value of consideration exchanged between the parties need not be precisely equal or even close; it can vary widely. However, it must possess genuine legal value to render the contract valid.

### Concept of Consideration

Consideration, in the context of a contract, refers to something of value or a benefit that one party gives or promises to give to the other party in exchange for something of value or a benefit promised by the other party. It is the quid pro quo, the "something for something" that distinguishes a contract from a gift. For a contract to be valid, it must have consideration.

### Adequacy vs. Reality

The principle that "consideration need not be adequate, but it must be real or valuable" essentially means that the court does not concern itself with the fairness or equity of the exchange. It is not the court's role to judge whether what was given in return is equal in value to what was promised. As long as there is a genuine exchange of value, the court will not inquire into the adequacy of consideration. This principle is established through various judicial precedents.

**To illustrate this principle further, let's consider following hypothetical scenario:**

Party A	Party B	Consideration	Validity of Contract
<b>Sells a vintage car</b>	Purchases a vintage car	₹10,000	Valid (consideration is real)
<b>Agrees to sell prime land</b>	Offers a bag of diamonds	Diamonds (significant value)	Valid (consideration is real)

In conclusion, the principle that "consideration need not be adequate, but it must be real or valuable" is a fundamental concept in contract law. It signifies that the court does not concern itself with whether the value exchanged is fair or equal; it only assesses whether there is a genuine exchange of value. This principle is essential for upholding the freedom of contract and the autonomy of parties.