

# Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

17th June- 23rd June, 2024

Bihar Reservation Amendments.....	1
Power to Award Compensation in Writ Petitions.....	2
Intent Requirement and IT Act.....	3
Karnataka High Court Upholds Conviction in Cheque Bounce Case.....	4
498-A Case Against Husband's Paramour.....	5
<b>Weekly Focus</b>	
Case of the Week.....	6
Repeated PYQ.....	7

## Bihar Reservation Amendments

In **Gaurav Kumar & Ors. vs. The State of Bihar**, the Patna High Court has struck down two significant amendment acts passed by the Bihar Legislature on November 9, 2023: the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes, and Other Backward Classes) Amendment Act, 2023, and the Bihar Reservation (in Admission to Educational Institutions) Amendment Act, 2023. These amendments, which sought to enhance reservations for certain backward classes to 65%, were deemed unconstitutional and in violation of Articles 14, 15, and 16 of the Indian Constitution.

The amendments were challenged in a Public Interest Litigation (PIL) on the grounds that they violated the fundamental right to equality of opportunity in public employment and admissions to educational institutions. The petitioners argued that the enhanced reservations exceeded the established 50% ceiling for reservations, thereby contravening constitutional provisions. The State of Bihar defended the amendments, citing the findings of a caste survey conducted on October 2, 2023, which purportedly justified the increased reservations.

### Ceiling Limit of 50% in Reservations

The Division Bench, comprising Chief Justice K. Vinod Chandran and Justice Harish Kumar, relied on several Supreme Court judgments, including **Indra Sawhney v. Union of India (1992)**, **M.R. Balaji v. State of Mysore (1962)**, **M. Nagaraj v. Union of India (2006)**, and **Union of India v. Rakesh Kumar & Others (2010)**, which consistently upheld a 50% ceiling on reservations. The court emphasised that any deviation from this limit could only be justified under exceptional circumstances, such as filling unfilled vacancies from previous years or in remote areas not integrated into mainstream national life. The court found no such extenuating circumstances in Bihar's case.

### Proportionate vs. Adequate Representation

The court noted that the amendments were based on the proportionate representation of backward classes rather than their adequate representation. According to the Constitution, specifically

Articles 15(4) and 16(4), reservations should be aimed at ensuring adequate representation of backward classes in public employment and educational institutions, not merely reflecting their population proportions. The court criticised the State for mechanically enhancing reservations based on population data without a thorough analysis of actual representation and socio-economic conditions.

### **Lack of Analysis and Scientific Study**

The court expressed concern over the State's failure to conduct a comprehensive analysis or scientific study before enacting the amendments. It showed the necessity of a detailed examination of the overall economic and social status of the castes in question. The court pointed out that the amendments were hastily enacted without sufficient evidence or expert consultation to justify the increase in reservations.

The Patna High Court concluded that the amendments violated the constitutional principle of equality and the established ceiling of 50% for reservations. It reiterated that any breach of this limit must be justified by exceptional circumstances, which were absent in this case. The court's decision reaffirms the balance between providing special provisions for backward classes and maintaining equality of opportunity for all citizens.

### **Power to Award Compensation in Writ Petitions**

In **Deepak Sharma and Another v. State of Haryana and Others**, the Punjab & Haryana High Court has clarified that writ Courts possess the authority to award compensation to aggrieved individuals, in addition to the independent right to claim compensation through civil actions based on tort law. This decision emerged from a case involving the tragic death of a child due to electrocution.

### **Case Details**

The case centred around the death of a three-year-old child, Arav Sharma, who was electrocuted after a high-voltage electricity wire fell on him while he was playing on the terrace. The child's parents sought compensation from Dakshin Haryana Bijli Vitran Nigam Ltd (DHBVN), alleging negligence on the part of the electricity distribution company. However, their initial claim was rejected, leading them to file a plea before the High Court.

### **On Compensation**

Justice Vinod S. Bhardwaj, addressing the plea, emphasised that writ Courts can award compensation for breaches of public duty. He noted that such awards are in addition to any claims the aggrieved parties may pursue through private law for tortious acts. The Court clarified that the amount of compensation would depend on the specific circumstances of each case, and no fixed formula exists for such determinations.

### **Principles and Precedents**

The Court relied on several legal precedents to support its ruling. In **Sanjay Gupta and others v. State of Uttar Pradesh and others** [(2022) 7 SCC 203], the Supreme Court underlined that claims for compensation in public law, especially for the unconstitutional deprivation of life and liberty, are based on strict liability. This principle was echoed in **D.K. Basu v. State of W.B.** [(1997) 1 SCC 416], affirming that public law claims are supplemental to private law claims for damages.

Further, the High Court referenced its own decision in **Jagir v. State of Haryana** [CWP-2648 of 2014], where it established that writ Courts can assess and award fair compensation even in the absence of detailed pleadings or evidence.

### **Examination of the Incident**

In this case, the Court acknowledged the disputed facts—whether the incident resulted from the petitioners' actions or the negligence of the distribution company. Justice Bhardwaj highlighted that even if there was contributory negligence, the petitioners would still be entitled to some compensation. He criticised the respondent for not taking proactive steps to prevent the construction that allegedly violated regulations, contributing to the accident.

### **Interim Relief and Further Steps**

Recognizing the financial distress of the petitioners, the Court awarded an interim compensation of Rs. 5 lakhs. However, it refrained from making definitive findings on the merits of the case or identifying the responsible party, noting that these issues involved disputed facts unsuitable for writ jurisdiction. The Court suggested that the petitioners pursue just and appropriate compensation through a court of competent jurisdiction.

### **Intent Requirement and IT Act**

In a significant judgement, the Kerala High Court has ruled that the automatic or accidental downloading of sexually explicit content involving children does not constitute an offence under Section 67B(b) of the Information Technology Act (IT Act) if there is no evidence of specific intent to do so. This decision highlights the importance of intent in prosecuting offences related to child pornography.

### **Case Background**

The petitioner in this case was accused of violating Section 15(2) of the Protection of Children from Sexual Offences (POCSO) Act and Section 67B(b) of the IT Act. The allegations stemmed from the discovery of child pornographic material on the petitioner's phone, which was downloaded from the messaging app Telegram.

### **Court's Observations**

The bench observed that no prima facie case was established against the petitioner under both the POCSO Act and the IT Act. The court emphasised that the evidence collected during the investigation did not demonstrate that the petitioner intentionally downloaded, browsed, recorded, shared, transmitted, propagated, displayed, or distributed the pornographic material. The mere presence of such material on the petitioner's device was not sufficient to establish criminal liability.

### **Analysis**

The court's analysis of Section 15(2) of the POCSO Act revealed that merely storing or possessing pornographic materials does not constitute an offence. For a conviction under this section, there must be clear evidence that the accused intended to transmit, propagate, display, or distribute the material. The court found no such evidence in this case.

Similarly, the court scrutinised Section 67B of the IT Act, which criminalises the act of publishing, transmitting, or causing any material in electronic form that depicts children engaged in sexually explicit acts or conduct. The court noted that the essential elements of this offence include intentional creation, sharing, or distribution of such material. In the absence of evidence showing the petitioner's intent, no offence was made out under this provision.

## **Karnataka High Court Upholds Conviction in Cheque Bounce Case**

In **A M Harish Gowda vs. Chalugaraju H S**, Karnataka High Court has upheld the conviction of A M Harish Gowda under Section 138 of the Negotiable Instruments Act, rejecting his appeal against the trial court's decision. Justice V Srishananda dismissed Gowda's contention that the cheque in question had been misused to file a false case against him.

### **Background of the Case**

A M Harish Gowda was convicted by the trial court for issuing a dishonoured cheque to the complainant, Chalugaraju H. Gowda claimed that the cheque had been issued in favour of one Prabhakar, who was not involved in the case, and that Chalugaraju had misused the cheque. However, the court found no evidence to support this claim, as Prabhakar was not examined, and no material evidence such as a counterfoil or cheque register was presented.

### **Court's Observations**

The court noted the absence of any proactive steps by Gowda, such as filing a police complaint, issuing a legal notice, or initiating civil proceedings regarding the alleged misuse of the cheque. This lack of action led the Trial Magistrate to draw a presumption in favour of the complainant, ultimately resulting in Gowda's conviction.

### **Rejection of Defence**

Gowda also argued that the complainant lacked the financial capacity to extend the amount specified in the cheque and that there was no legally recoverable debt. The court dismissed these arguments, pointing out that Gowda failed to provide any counter-evidence to support his defence, despite testifying as D.W-1.

### **Trial Court's Sentence and Fine**

The trial court sentenced Gowda to a fine of Rs.4,30,000, with Rs.4,00,000 designated as compensation for the complainant and Rs.30,000 for the State's expenses. The High Court bench noted that the trial court misdirected itself by imposing a fine double the amount of the cheque without appropriate foundation in the complaint or evidence.

### **High Court's Modifications to the Sentence**

The High Court found that the trial court lacked the authority to impose a fine exceeding double the cheque amount and that the first appellate court failed to address this error when dismissing Gowda's appeal. Considering the passage of time since the original conviction in 2016 and the disposal of the appeal in 2021, the High Court reduced the fine to Rs.3,25,000.

## 498-A Case Against Husband's Paramour

In **ABC & ANR v. State of Karnataka & ANR**, the Karnataka High Court quashed a criminal case registered under Section 498-A of the Indian Penal Code (IPC) against the paramour of a husband. The case also included multiple other charges against various family members. The single judge bench of Justice M. Nagaprasanna delivered this decision, providing clarity on the application of Section 498-A.

### Background of the Case

The case involved a complaint by a wife against her husband and his alleged paramour, along with the paramour's mother and several family members. The marriage between the complainant and her husband, accused No.1, took place on February 7, 2022. The relationship between them deteriorated, leading to the registration of a criminal case against the husband and other accused under Sections 498A, 323, 324, 307, 420, 504, 506, and 34 of the IPC, as well as Sections 3 and 4 of the Dowry Prohibition Act, 1961.

### Petitioners' Arguments

The petitioners, who were the husband's alleged paramour and her mother, sought to quash the case. They argued that the complaint did not contain any specific allegations against them that would justify the charges. The petitioners contended that they were unjustly implicated without any substantive evidence, merely being drawn into the investigation without any basis.

### Complainant's Arguments

The complainant maintained that the police investigation had led to a charge sheet against all accused, asserting the gravity of the offences. She argued that the first petitioner, the paramour, was responsible for the disturbances in her marital life, implicating her in the broader familial conflict. However, no specific allegations were made against the paramour's mother, the second petitioner.

### Court's Findings

Justice M. Nagaprasanna, after examining the complaint, noted that it indicated an affair between the complainant's husband and the first petitioner. The judge emphasised that, under settled law, a paramour cannot be prosecuted under Section 498-A of the IPC, as this section pertains to cruelty by a husband or his relatives. Consequently, the charges against the paramour under Section 498-A were dismissed.

The court also reviewed the other charges under Sections 323, 324, 307, 420, 504, and 506 of the IPC, finding that none of the allegations in the complaint substantiated these offences against the first petitioner. The charges were described as "loosely laid" without any solid foundation. Similarly, the second petitioner, the paramour's mother, was found to be unnecessarily implicated without any substantial allegations against her.

## Case of the Week

### River Meuse Case (Netherlands v Belgium)

The River Meuse Case (Netherlands v Belgium) (PCIJ Ser A/B No 70, 1937) is a landmark case adjudicated by the Permanent Court of International Justice (PCIJ). The case revolves around the interpretation of treaty obligations and the application of principles of equity in international law, arising from a dispute between the Netherlands and Belgium over the regulation and use of the River Meuse.

#### Dispute

The origins of the dispute trace back to the 1863 Treaty between the Netherlands and Belgium, which outlined mutual obligations concerning the management and navigability of the River Meuse. Both countries agreed to undertake specific works to enhance navigation and manage water resources. However, disagreements emerged over time regarding the compliance with these treaty obligations, particularly related to construction works that could affect the river's flow and usage.

#### Issues

The main legal issues addressed by the PCIJ were:

1. Whether Belgium's actions constituted a violation of the treaty obligations as stipulated in the 1863 Treaty.
2. The role and applicability of principles of equity in resolving the dispute.

#### Treaty Obligations

The PCIJ conducted an in-depth analysis of the 1863 Treaty and the specific obligations it imposed on both parties. The Court examined whether each party's actions adhered to the treaty terms, focusing on the construction of hydraulic works and their potential impact on the river's flow and navigability.

#### Principles of Equity in International Law

A significant aspect of the Court's analysis was the application of principles of equity. Judge Hudson, in his individual opinion, underscored that equity is a fundamental component of international law, integral to the Court's interpretation and application of treaty obligations. He argued that equity represents general principles of justice recognized by civilised nations and should guide the resolution of international disputes.

#### Judgment

The PCIJ found that both the Netherlands and Belgium had, to some extent, violated their treaty obligations. However, the Court emphasised the necessity of applying equitable principles to resolve the dispute fairly. It concluded that both countries should engage in further negotiations, guided by principles of equity, to reach a just solution. The judgement highlighted the importance of mutual cooperation and good faith in fulfilling international treaty obligations.

## Repeated PYQ

**Q. Pragmatic regime of right to information for citizens is the key to good governance in India, but it is not being implemented in its original spirit. Examine it in the light of the decision of the Supreme Court in Anjali Bhardwaj v Union of India.**

The Right to Information Act (RTI), 2005, marked a significant milestone in India's journey towards transparency and accountability in governance. Enacted to empower citizens by providing access to information held by public authorities, the RTI Act aims to ensure good governance by promoting transparency and combating corruption.

However, despite its noble intent and comprehensive framework, the implementation of the RTI Act has often fallen short of its original spirit. The Supreme Court's decision in Anjali Bhardwaj v. Union of India highlights critical shortcomings and provides a roadmap for revitalising the Act's pragmatic regime.

### Essence of the RTI Act

The RTI Act, 2005, is grounded in the principle that an informed citizenry is essential for a healthy democracy. It mandates public authorities to proactively disclose information and respond to requests for information from citizens. The Act's objectives include promoting transparency, ensuring accountability, and enabling citizens to participate meaningfully in governance. The establishment of Central and State Information Commissions to oversee the Act's implementation and address grievances highlights the commitment to these objectives.

### Anjali Bhardwaj v. Union of India

In the landmark case of Anjali Bhardwaj v. Union of India, the Supreme Court addressed significant gaps in the implementation of the RTI Act. The petitioners highlighted issues such as the delayed appointment of Information Commissioners, the dominance of bureaucrats in these roles, and the lack of transparency in the selection process. The Supreme Court passed following directives:

- 1. Diversity in Appointments:** The Court emphasised the need for a diverse pool of Information Commissioners, arguing that competent individuals from various backgrounds, not just government employees, should be considered. This diversity is crucial for bringing different perspectives and enhancing the Commission's effectiveness.
- 2. Transparency in Selection:** The Court mandated that all details related to the appointment process, including advertisements, applicant details, and the composition of selection committees, be made publicly available. This transparency is essential for building trust in the appointment process and ensuring that it is free from biases.
- 3. Adequate Strength of Commissions:** The Supreme Court stressed that State Information Commissions should have the required number of Commissioners to handle the volume of appeals and complaints efficiently. The Act allows for the appointment of up to ten Information Commissioners, and the Court urged state governments to fulfil this obligation to prevent delays in the disposal of cases.

4. **Timeliness:** To avoid gaps in functioning, the Court recommended initiating the appointment process for Commissioners one to two months before the expected vacancy date. This proactive approach ensures that the Commissions are always fully staffed and can operate without interruption.
  
5. **Promotion of Good Governance:** The Court reiterated that the RTI Act is not just about the right to information but also about promoting good governance, which is vital for a vibrant democracy. By ensuring that citizens have access to information, the Act aims to make governance more transparent and accountable.

### Challenges in Implementation

Despite the Supreme Court's clear directives, several challenges hinder the effective implementation of the RTI Act:

1. **Bureaucratic Resistance:** There is often resistance within the bureaucracy to disclose information, leading to delays and non-compliance. This reluctance undermines the Act's objective of transparency.
  
2. **Inadequate Infrastructure:** Many public authorities lack the necessary infrastructure and resources to handle RTI requests efficiently. This results in prolonged delays and frustrates citizens seeking information.
  
3. **Penalties and Accountability:** Although the Act provides for penalties against Public Information Officers (PIOs) who fail to comply with its provisions, these penalties are seldom imposed. The lack of accountability mechanisms weakens the Act's enforcement.
  
4. **Awareness and Training:** Both citizens and officials often lack awareness about the provisions of the RTI Act and their rights and responsibilities under it. Effective training and awareness programs are essential to bridge this gap.

The Right to Information Act, 2005, is a powerful tool for ensuring transparency and accountability in governance. However, its implementation has not always been in line with its original spirit. The Supreme Court's decision in *Anjali Bhardwaj v. Union of India* highlights the need for diversity, transparency, and timeliness in the appointment of Information Commissioners, along with adequate infrastructure and strict enforcement of penalties. Addressing these challenges is crucial for realising the Act's full potential and ensuring that it serves as an effective instrument for good governance in India.