

## Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**21st Jan - 26th Jan 2025**

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### 1. Supreme Court Judgment on Challenge to Arbitral Tribunal's Jurisdiction

In the case of *M/S Vidyawati Construction Company vs. Union of India*, the Supreme Court addressed the issue of whether a party can challenge the jurisdiction of an arbitral tribunal after submitting its statement of defence. The case arose when the respondent objected to the jurisdiction of the arbitral tribunal after it had submitted its statement of defence.

The arbitral tribunal rejected this objection and proceeded to pass an award in favor of the appellant. However, the District Judge set aside the award, and this decision was upheld by the Allahabad High Court. The appellant, in its appeal, argued that the High Court erred in upholding the District Judge's decision, asserting that under Section 16(2) of the Arbitration and Conciliation Act, 1996, the respondent had waived its right to challenge the tribunal's jurisdiction after submitting the statement of defence.

The Supreme Court, in its judgment, upheld the appellant's contention and clarified that it is impermissible for a party to raise objections regarding the jurisdiction of the arbitral tribunal after submitting the statement of defence. The Court referred to Section 16(2) of the Arbitration and Conciliation Act, which explicitly bars such objections once the statement of defence has been filed.

By submitting the statement of defence and allowing for modifications, the respondent had effectively waived its right to challenge the tribunal's jurisdiction at a later stage. The Court emphasized that raising such an objection after the submission of the statement of defence was not permissible and that the arbitral tribunal had rightly rejected the respondent's objection.

Consequently, the Supreme Court set aside the Allahabad High Court's judgment and restored the arbitral award. The judgment reinforces the principle of finality in arbitral proceedings and stresses the importance of timely objections regarding jurisdiction. It also underscores that any challenge to the arbitral tribunal's jurisdiction must be raised at the earliest stage of the proceedings, in order to maintain the integrity and efficiency of the arbitration process.

## 2. Sudden & Grave Provocation' Reduces Murder To Culpable Homicide?

In the recent case of *Vijay @ Vijayakumar v. State Represented by Inspector of Police*, the Supreme Court examined when "sudden and grave provocation" can reduce the charge of murder to culpable homicide not amounting to murder under Section 300 of the Indian Penal Code (IPC). Exception 1 to Section 300 of the IPC provides that culpable homicide does not amount to murder when the accused is deprived of self-control due to sudden and grave provocation. The Court, in its judgment delivered on January 16, 2025, clarified that not every provocation, even if sudden, qualifies for this exception.

The Bench, comprising Justices J.B. Pardiwala and R. Mahadevan, emphasized that for the exception to apply, the provocation must be both sudden and grave. The Court further explained that if the provocation is grave but not sudden, or if it is sudden but not grave, the exception cannot be invoked.

The provocation must be unexpected and must not involve pre-planning, with a brief interval between the provocation and the homicide. For instance, if the accused kills the provocateur within a minute of the provocation, it qualifies as "**sudden provocation**." However, if the killing happens hours later, it no longer fits this description.

The Court also highlighted the importance of an objective test to determine whether the provocation was grave. It suggested considering whether a "**reasonable man**" would lose self-control in such a situation, with the understanding that the concept of a "**reasonable man**" can vary depending on the society's norms and the individual's background. For example, while an exchange of insults might not be considered grave provocation, certain actions like adultery might trigger a strong reaction in some societies.

In the case at hand, the Court concluded that while the deceased's actions—utterances and a slap—were provocative, they did not constitute grave provocation under the legal standards. The Court suggested that instead of Exception 1, Exception 4 (which deals with culpable homicide in a sudden fight) might have been more applicable.

Despite this, the Court did not disturb the appellant's conviction but reduced the sentence to the period already undergone. This decision reinforces the nuanced application of the legal exceptions in cases of sudden and grave provocation.

## 3. Supreme Court Rejects Promotion Claim Based on Past Illegalities

In the case of *Jyostnamayee Mishra v. The State of Odisha and Ors.*, the Supreme Court rejected the plea of a retired peon who sought promotion to the post of Tracer based on the illegal promotions granted to others in the past. The appellant argued that she was entitled to the promotion, as others in similar positions had been promoted, despite the recruitment rules specifying that the Tracer position should be filled solely through direct recruitment. The case arose from an earlier decision by the Orissa High Court.

The Orissa Subordinate Architectural Service Rules, 1979, clearly mandate 100% direct recruitment for the Tracer post, which was not adhered to in the past, leading to promotions from lower-level posts such as peons. The appellant relied on these irregular promotions, citing a perceived discrimination based on the promotions granted to her colleagues.

The Supreme Court, in its ruling, emphasized that **Article 14 of the Constitution does not allow for negative equality or discrimination based on past illegalities**. The judgment, authored by Justice

Rajesh Bindal, held that promotions granted to other employees outside the legal framework were themselves illegal and could not be used as a basis for promoting the appellant. The Court noted that a litigant cannot seek to perpetuate an illegal act by claiming discrimination or parity with those who had received unjustified benefits.

Referring to the case of ***R. Muthukumar & others v. The Chairman and Managing Director TANGEDCO (2022)***, the Court reaffirmed that any benefits or advantages conferred without legal justification cannot be relied upon to justify further illegal actions. The principle of legality prevails, and the promotion of the appellant, based on past illegalities, was not permissible.

Thus, the Supreme Court dismissed the appeal, reinforcing the legal principle that irregular promotions cannot be a basis for claiming rights or seeking further illegal promotion. This decision highlights the importance of adhering to recruitment rules and ensuring that promotions are made in accordance with legal provisions.

#### **4. SC: High Court Judgment Cannot Be Declared Illegal Under Article 32**

In the case of ***Vimal Babu Dhumadiya vs. The State of Maharashtra***, the Supreme Court held that a High Court judgment cannot be declared illegal under Article 32 of the Constitution of India. The petitioners had filed a writ petition challenging a judgment by the Bombay High Court, which directed the demolition of five apartment complexes that were built without valid permits from the Mumbai Metropolitan Region Development Authority (MMRDA) on government land. The High Court had also made certain directions regarding compensation and rehabilitation for the flat owners.

The petitioners contended that they were not heard in the matter and were not impleaded as parties to the proceedings, which led to the impugned judgment being passed without their participation. They sought to have the judgment declared illegal and also prayed for the regularization of their apartments and the grant of occupancy or leasehold rights over the government land.

The Supreme Court, in its judgment, clarified that under Article 32, which grants the right to move the Supreme Court for the enforcement of fundamental rights, a High Court judgment cannot be declared illegal. The Court stated that if the petitioners felt aggrieved by the judgment, particularly for not being heard, their remedy would lie in filing a recall application before the High Court or challenging the judgment through a Special Leave Petition (SLP) under Article 136 before the Supreme Court.

The Court further emphasized that the petitioners' request to declare the judgment illegal was not a valid ground under Article 32, and they should pursue other legal remedies available to them. As a result, the Supreme Court dismissed the writ petition but left open the option for the petitioners to explore other remedies as per law.

#### **Weekly Focus**

#### **Case of the week: Mahboob Shah v. Emperor (AIR 1945 PC 118)**

**Legal Issue:** Application of Section 34 of the Indian Penal Code (IPC) concerning the concept of 'common intention' in joint criminal liability.

**Facts:** On August 25, 1943, Allah Dad and his companions set out to collect reeds from the Indus River. They encountered Mohammad Hussain Shah, who warned them against collecting reeds from his land. Despite the warning, they proceeded. Later, Ghulam Shah, nephew of Mohammad Hussain Shah, confronted them, demanding the return of the reeds. A scuffle ensued, during which Allah Dad struck Ghulam Shah with a bamboo pole. Ghulam Shah called for help, prompting Mahboob Shah and Wali Shah to arrive armed with guns. As Allah Dad and Hamidullah attempted to flee, Wali Shah shot and killed Allah Dad, while Mahboob Shah shot and injured Hamidullah. Mahboob Shah was charged with murder under Section 302 read with Section 34 of the IPC.

**Legal Analysis:** The central issue was whether Mahboob Shah's actions were committed in furtherance of a common intention, as required under Section 34 of the IPC. Section 34 holds that when a criminal act is done by several persons in furtherance of a common intention, each is liable for that act as if it were done by him alone.

The Privy Council emphasized that 'common intention' implies a pre-arranged plan and a prior meeting of minds. It is not sufficient for individuals to act with the same or similar intentions; there must be a shared intent to commit the specific criminal act.

In this case, the evidence did not establish that Mahboob Shah and Wali Shah had a pre-arranged plan to murder Allah Dad. Their actions appeared to be in response to a sudden altercation, lacking the necessary premeditation and common intention to invoke Section 34.

**Conclusion:** The Privy Council concluded that Mahboob Shah's conviction under Section 302 read with Section 34 was not substantiated. The absence of a pre-arranged plan and common intention led to the acquittal of Mahboob Shah. This case underscores the necessity of proving a shared intent among participants in a crime to establish joint liability under Section 34 of the IPC.

### PYQ Solution

**Explain the scope of the 'Special Leave Jurisdiction' of the Supreme Court as expounded by it. (10 MARKS)**

The Special Leave Jurisdiction of the Supreme Court of India, as provided under Article 136 of the Constitution, is one of the most significant and expansive judicial powers vested in the apex court.

This jurisdiction allows the Supreme Court to grant special leave to appeal from any judgement, decree, determination, sentence, or order passed or made by any court or tribunal in the territory of India. The broad and discretionary nature of this power enables the Supreme Court to address a wide array of legal issues and ensure justice

**Discretionary Nature:** The power conferred by Article 136 is purely discretionary. It is not a right that can be claimed by any party, but rather a privilege that the Supreme Court may choose to grant in cases it deems fit. This discretion allows the Court to intervene in a wide range of cases where it believes that substantial justice has not been done.

**Exceptional Circumstances:** The Supreme Court generally exercises its special leave jurisdiction in exceptional circumstances where there is a grave miscarriage of justice, or where a legal principle of

great public importance is involved. The Court has emphasised that this power is to be used sparingly and in cases where there is a significant question of law or a manifest injustice.

**Pritam Singh v. The State (1950):** The Supreme Court clarified that the power should be used sparingly and in exceptional cases where there is a gross miscarriage of justice.

**Durga Shankar Mehta v. Thakur Raghuraj Singh (1954):** The Court held that special leave can be granted even if the legal point raised is of substantial public importance.

#### **Parameters for Exercise of Special Leave Jurisdiction**

- Grave Injustice
- Substantial Questions of Law
- Violation of Fundamental Rights
- Public Interest

**Subsidiary Role:** The power under Article 136 is intended to act as a subsidiary safeguard to ensure justice, not to replace the established appellate mechanisms.

