THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT
EXECUTIVE PROGRAMME
(New Syllabus 2022)

for

June, 2024 Examination

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

GROUP 1

PAPER 1

Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

Index

S. No.	Lesson	Pages
1	Lesson 2: Constitution of India	2-3
2	Lesson 3: Interpretation of Statutes	4
3	Lesson 6: Law relating to Civil Procedure	5-6
4	Lesson 9: Law relating to Specific Relief	7
5	Lesson 10: Law relating to Limitation	8
6	Lesson 11 - Law relating to Arbitration, Mediation and Conciliation	9-15
7	Lesson 15: Law relating to Information Technology	16-18
8	Lesson 16: Contract Law	19
9	Lesson 18: Law relating to Negotiable Instruments	20

Lesson 2: Constitution of India

1. Satender Kumar Antil vs. Central Bureau of Investigation and Ors. (11.07.2022 - SC)

In this case, taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in *Arnesh Kumar (supra)*. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.

d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.

e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.

f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in Siddharth (supra).

g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.

i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.

j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in Bhim Singh (supra), followed by appropriate orders.

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

2. CBI vs. R. R. Kishore (Supreme Court on 11.09.2023)

In this case*, the Supreme Court decided on the point that* whether declaration made in the case of *Subramanian Swamy vs. Director, Central Bureau of Investigation and another* (2014) 8 SCC 682, that Section 6A of the Delhi Special Police Establishment Act, 1942 being unconstitutional, can be applied retrospectively in context with Article 20 of the Constitution.

The Supreme Court has decided that it is crystal clear that once a law is declared to be unconstitutional, being violative of Part-III of the Constitution, then it would be held to be void *ab initio*, still born, unenforceable and *non est* in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. Thus, the declaration made by the Constitution Bench in the case of Subramanian Swamy will have retrospective operation. Section 6A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11.09.2003.

Lesson 3: Interpretation of Statutes

The Authority for clarification and Advance Ruling & Anr. v. M/s. Aakavi Spinning Mills (P) Ltd. (Order dated 12.01.2022)

The Supreme Court in its order dated 22.01.2022 has *inter alia* said that when the Entry in question specifically provides for exemption to the goods described as "Hank Yarn" without any ambiguity or qualification, its import cannot be restricted by describing it as being available only for the hank form of one raw material like cotton nor could it be restricted with reference to its user industry.

The court in para 11 of the Order has mentioned that as noticed, the Entry in question, as inserted into the Fourth Schedule to the Act, is clear and specific that is, "Hank Yarn"; it carries neither any ambiguity nor any confusion. Undoubtably, the yarn in the hank form (which is a unit of measure), has come for exemption under the said Entry 44; and obviously, that exemption enures to the benefit of the handloom industry too. However, for that matter, if the benefit of this broad and unambiguous entry also goes to any other industry, there is absolutely no reason to deny such benefit. In other words, we find no reason to restrict the Entry in its operation to the handloom industry alone or to any particular class of hank yarn like "Cotton Hank Yarn" only. The exemption Entry being clear and unambiguous, no external aid for interpretation is called for, whether in the form of Budget speech or any other notification under any other enactment.

Lesson 6: Law relating to Civil Procedure

Yashpal Jain v. Sushila Devi & Others decided by Supreme Court on 20th October, 2023

In this case, in the preface of the Judgement, Hon'ble Supreme Court has stated that:

Even after 41 years, the parties to this *lis* are still groping in the dark and litigating as to who should be brought on record as legal representative of the sole plaintiff. This is a classic case and a mirror to the fact that litigant public may become disillusioned with judicial processes due to inordinate delay in the legal proceedings, not reaching its logical end, and moving at a snail's pace due to dilatory tactics adopted by one or the other party.

Further in this case, the Supreme Court has issued the following 12 directions for Speedy Trial of Civil Cases:

i. All courts at district and taluka levels shall ensure proper execution of the summons and in a time bound manner as prescribed under Order V Rule (2) of CPC and same shall be monitored by Principal District Judges and after collating the statistics they shall forward the same to be placed before the committee constituted by the High Court for its consideration and monitoring.

ii. All courts at District and Taluka level shall ensure that written statement is filed within the prescribed limit namely as prescribed under Order VIII Rule 1 and preferably within 30 days and to assign reasons in writing as to why the time limit is being extended beyond 30 days as indicated under *proviso* to sub-Rule (1) of Order VIII of CPC.

iii. All courts at Districts and Talukas shall ensure after the pleadings are complete, the parties should be called upon to appear on the day fixed as indicated in Order X and record the admissions and denials and *the court shall direct the parties to the suit to opt for either mode of the settlement outside the court as specified in sub-Section (1) of Section 89* and at the option of the parties shall fix the date of appearance before such forum or authority and in the event of the parties opting to any one of the modes of settlement directions be issued to appear on the date, time and venue fixed and the parties shall so appear before such authority/forum without any further notice at such designated place and time and it shall also be made clear in the reference order that trial is fixed beyond the period of two months making it clear that in the event of ADR not being fruitful, the trial would commence on the next day so fixed and would proceed on day-to-day basis.

iv. In the event of the party's failure to opt for ADR namely resolution of dispute as prescribed under Section 89(1) the court should frame the issues for its determination within one week preferably, in the open court.

v. Fixing of the date of trial shall be in consultation with the learned advocates appearing for the parties to enable them to adjust their calendar. Once the date of trial is fixed, the trial should proceed accordingly to the extent possible, on day-to-day basis.

vi. Learned trial judges of District and Taluka Courts shall as far as possible maintain the diary for ensuring that only such number of cases as can be handled on any given day for trial and complete the recording of evidence so as to avoid overcrowding of the cases and as a sequence of it would result in adjournment being sought and thereby preventing any inconvenience being caused to the stakeholders.

vii. The counsels representing the parties may be enlightened of the provisions of Order XI and Order XII so as to narrow down the scope of dispute and it would be also the onerous responsibility of the Bar Associations and Bar Councils to have periodical refresher courses and preferably by virtual mode.

viii. The trial courts shall scrupulously, meticulously and without fail comply with the provisions of Rule 1 of Order XVII and once the trial has commenced it shall be proceeded from day to day as contemplated under the proviso to Rule (2).

ix. The courts shall give meaningful effect to the provisions for payment of cost for ensuring that no adjournment is sought for procrastination of the litigation and the opposite party is suitably compensated in the event of such adjournment is being granted.

x. At conclusion of trial the oral arguments shall be heard immediately and continuously and judgment be pronounced within the period stipulated under Order XX of CPC.

xi. The statistics relating to the cases pending in each court beyond 5 years shall be forwarded by every presiding officer to the Principal District Judge once in a month who (Principal District Judge/District Judge) shall collate the same and forward it to the review committee constituted by the respective High Courts for enabling it to take further steps.

xii. The Committee so constituted by the Hon'ble Chief Justice of the respective States shall meet at least once in two months and direct such corrective measures to be taken by concerned court as deemed fit and shall also monitor the old cases (preferably which are pending for more than 05 years) constantly.

Lesson 9: Law relating to Specific Relief

Munishamappa v. M. Rama Reddy & Ors decided by Supreme Court on 02.11.2023

In this case, the appeal decided the correctness of the judgment, passed by High Court in which the Second Appeal preferred by the defendant-respondent was allowed, and the suit for specific performance of contract filed by the appellant was dismissed.

An important question in this case decided by the Hon'ble Supreme Court was relating to distinguishment between Sale Deed and Agreement to Sell.

In the Judgement, the Apex Court has stated that the Agreement to Sell is not a conveyance; it does not transfer ownership rights or confers any title.

Lesson 10: Law relating to Limitation

1. Ajay Dabra vs. Pyare Ram and Ors. (31.01.2023 - SC)

In this case the impugned order of High Court of Himachal Pradesh dismissed the delay condonation applications filed Under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons assigned for the condonation were not sufficient reasons for condonation of the delay. This was not found to be a sufficient reason for the condonation of delay as the Appellant was an affluent businessman and a hotelier.

The Supreme Court has said that we do not have a case at hand where the Appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the Appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the Appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the Appellant filed an appeal in terms of Section 149 Code of Civil Procedure and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

2. A. Valliammai vs. K.P. Murali and Others decided by Supreme Court on 11th September, 2023

In this case the Supreme Court has referred to the provisions of Article 54 of Part II of the Schedule to the Limitation Act, 1963 which stipulates the limitation period for filing a suit for specific performance as three years from the date fixed for performance, and in alternative when no date is fixed, three years from the date when the plaintiff has notice that performance has been refused.

The Supreme Court referred to the case earlier decided in *Pachanan Dhara and Others v. Monmatha Nath Maity (2006) 5 SCC 340*. The Supreme Court in referred case had held that for determining applicability of the first or the second part, the court will have to see whether any time was fixed for performance of the agreement to sell and if so fixed, whether the suit was filed beyond the prescribed period, unless a case for extension of time or performance was pleaded or established. However, when no time is fixed for performance, the court will have to determine the date on which the plaintiff had notice of refusal on part of the defendant to perform the contract.

Lesson 11 - Law relating to Arbitration, Mediation and Conciliation

1. Cholamandalam Investment and Finance Company Ltd. vs. Amrapali Enterprises and Ors. (14.03.2023 - CALHC)

This case has given a clarification on unilateral appointment of Arbitrator.

Calcutta High Court decided that in light of the aforementioned judicial precedents(mentioned in the Judgement), it can be said with unambiguous certainty that the unilateral appointment of Arbitrator by the award holder is illegal and void. However, what still remains to be determined is the impact of the aforesaid illegality on the arbitral award and the present execution petition.

The Court further stated that ……. It is a settled principle of law that compliance with Section 12(5) read with Schedule VII is *sine qua non* for any arbitral reference to gain recognition and validity before the Courts. In the present facts in hand, an arbitral reference which itself began with an illegal act has vitiated the entire arbitral proceedings from its inception and the same cannot be validated at any later stage. Thus, it would be a logical inference to consider the aforesaid arbitral proceedings as void ab initio.

2. **Can court exercising power under Section 37 of the Act modify the orders of the arbitral tribunal to protect the subject matter of the arbitration?**

Asian Hotels (North) Ltd. vs. Sital Dass Sons and Ors. (22.12.2022 - DELHC)

The High Court of Delhi has said in the Judgment of this case that this Court is aware of the limited scope of interference in appeal against orders passed by Arbitrators on applications under Section 17 of the Act. However, in appropriate cases, Court can exercise its jurisdiction under Section 37 of the Act to protect the legitimate interest of the appellant, which includes modifying the order of the learned Arbitral Tribunal. It may be noted that jurisdiction of this Court under Section 37 of the Act is substantially different from the scope of jurisdiction under Section 34 of the Act, which does not include the authority to modify the award passed by the Arbitral Tribunal.

3. **Application of Fundamental Rights while passing of Awards by Arbitrators**

The Chairman Board of Trustees for Shyama Prasad Mookherjee Port Kolkata vs. Universal Sea Port Private Ltd. (03.11.2022 - CALHC)

In this case, the Calcutta High Court has said in my understanding, the respondent seems to have had found favour with the arbitrator's sympathies, but unfortunately, they do not find favour with my sympathies and most unfortunately, they do not find favour with the law. It is evident that considerations of discrimination and want of state functionaries to act in due conformance to

Article 14 of the Constitution swayed the arbitrator's contractual interpretation. The aforesaid inference can be gauged from paragraph 5(e) of this judgement. Firstly, arbitrators cannot apply the rights envisaged under the fundamental rights of the Constitution of India or equity while granting arbitral awards, and if they do, such awards must be set aside as being patently illegal under Section 34(2A) of the Act. The arbitrator is a creature of contract and must act within the powers granted by it…..

4. ***M/s Obulapuram Mining Company Pvt. Ltd. v. R.K. Mining Private Limited decided by High Court of Andhra Pradesh on 12th September, 2023***

In this case, the essential objection before the court was raised that after the Commercial Courts Act, 2015 came into force an Award can only be executed before the Commercial Court and that the regular District Judge did not have the jurisdiction to entertain this case. He points out that initially by virtue of G.O.Ms.No.74, dated 10.06.2016, the Principal District and Sessions Courts in all the districts of the State of Andhra Pradesh were designated as Commercial Courts.

The contention of the respondents on the other hand, as far as jurisdiction is concerned, was that the Commercial Courts do not have the power to execute an Arbitration Award. Learned senior counsel contends that the execution of an Award, even if the same relates to a dispute of commercial value and commercial industry, can only be before a regular Civil Court as per the provisions of Order 21 of the Code of Civil Procedure, 1908.

The Hon'ble High Court of Andhra Pradesh in the Judgement stated that with reference to the provisions of Arbitration and Conciliation Act, 1996, Commercial Courts Act and Code of Civil Procedure that *"A reading of these sections and amendments in seriatim shows that the intention of the legislature was only to modify and streamline the procedures and practices relating to suits and applications in suits etc., which are pending for disposal."*

The silence or failure to refer to Order 21 does not mean that the Commercial Court cannot execute a decree. A purposive interpretation has to be given to the provisions of the Act. If it is not so interpreted the Commercial Courts will be powerless in many aspects.

5. *Chennai Metro Rail Limited Administrative Building v. M/s Transtonnelstroy Afcons (JV) & Anr. decided by Supreme Court on 19th October, 2023*

In this case, Chennai Metro Rail Limited("Chennai Metro"), a joint venture between the Central Government and the Government of Tamil Nadu, had awarded the contract to the respondent ("Afcons").

The tribunal recorded the agreement of parties, that the hearing fee for each arbitrator was fixed at ₹ 1,00,000/- per session of hearing date. A member of tribunal was substituted. Further, in the 10th Meeting, the tribunal sought to revise the fee payable from ₹ 1,00,000/- to ₹ 2,00,000/. Chennai Metro objected to this revision and Afcons requested the tribunal to keep its direction for modification of fee, in abeyance till the decision of this court.

Later, Afcons informed Chennai Metro that it had paid the revised fee for five hearings but Chennai Metro filed an application before the Madras High Court. In this proceeding under Section 14, the relief sought was a declaration that the mandate of the tribunal was terminated in respect of the disputes referred to them.

All three members of the tribunal filed affidavits, in response to the Section 14 petition acknowledging that Supreme Court's judgment in *ONGC v. AFCONS Gunasa JV2* (hereafter "ONGC") had decided the issue and thus members of the tribunal decided to revert back to the originally agreed fee i.e., ₹1,00,000.

Initially, the High Court granted an interim order, staying the proceedings. However, after hearing counsel for the parties, and considering the materials on the record, the court dismissed the application, filed by Chennai Metro through the impugned judgment.

In the present SLP filed before Hon'ble Supreme Court, it was decided that the attempt by Chennai Metro to say that the concept of *de jure* ineligibility because of existence of justifiable doubts about impartiality or independence of the tribunal on unenumerated grounds [or other than those outlined as statutory ineligibility conditions in terms of Sections 12 (5)], therefore cannot be sustained. We can hardly conceive of grounds other than those mentioned in the said schedule, occasioning an application in terms of Section 12(3). In case, this court were in fact make an exception to uphold Chennai Metro's plea, the consequences could well be an explosion in the court docket and other unforeseen results. Skipping the statutory route carefully devised by Parliament can cast yet more spells of uncertainty upon the arbitration process….

6. Mediation Act, 2023

Mediation Act, 2023 has received the assent of the Hon'ble President of India on the 14th September, 2023. The object of this law *inter alia* is to promote and facilitate mediation, resolution of disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process. The provisions of this law will come into force on such date(s) as the Central Government will notify. The following sections of the Mediation Act, 2013 has come into force w.e.f. 9th October, 2023.

These sections are as follows:

Section 1: Short title, extent and commencement

This Act may be called the Mediation Act, 2023. It shall extend to the whole of India. It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Section 3: Definitions

The important definitions provided in section 3 *inter alia* is as under:

(a) "commercial dispute" means a dispute defined in clause (c) of sub-section (1) of section 2 of the Commercial Courts Act, 2015;

(b) "community mediator" means a mediator for the purposes of conduct of community mediation under Chapter X;

(c) "Council" means the Mediation Council of India established under section 31;

(e) "court-annexed mediation" means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal;

(f) "institutional mediation" means mediation conducted under the aegis of a mediation service provider;

(g) "international mediation" means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is-

> (i) an individual who is a national of, or habitually resides in, any country other than India; or
>
> (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India; or
>
> (iii) an association or body of individuals whose place of business is outside India; or
>
> (iv) the Government of a foreign country;

(h) "mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;

(i) "mediator" means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council. Explanation.—Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

(j) "mediation agreement" means a mediation agreement referred to in sub-section (1) of section 4;

(k) "mediation communication" means communication made, whether in electronic form or otherwise, through—

(i) anything said or done;

(ii) any document; or

(iii) any information provided,

for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;

(l) "mediation institute" means a body or organisation that provides training, continuous education and certification of mediators and carries out such other functions under this Act;

(m) "mediation service provider" means a mediation service provider referred to in sub-section (1) of section 40;

(n) "mediated settlement agreement" means mediated settlement agreement referred to in sub-section (1) of section 19;

(q) "online mediation" means online mediation referred to in section 30;

(u) "pre-litigation mediation" means a process of undertaking mediation, as provided under section 5, for settlement of disputes prior to the filing of a suit or proceeding of civil or commercial nature in respect thereof, before a court or notified tribunal under sub-section (2) of section 5;

(y) "specified" means specified by regulations made by the Council under this Act.

Section 31 to Section 38 relating to Mediation Council of India

The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act. The composition of Council shall be in accordance with provisions provided under section 32 of the Mediation Act, 2023. Other provisions inter alia relates to Vacancies, etc., not to invalidate proceedings of Council, Resignation, Removal, Appointment of experts and constitution of Committees, Secretariat and Chief Executive Officer of Council and Duties and functions of Council.

Section 45 to 47 relating to Mediation Fund, Accounts and Audits & Power of Central Government to issue directions

Section 45 provides for creation of "Mediation Fund" and prescribes the amounts that may be credited to this fund.

Further, the accounts of the Council are to be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

In exercise of its powers or the performance of its functions under this Act, the Council shall be bound by directions on questions of policy as the Central Government may give in writing to it and the decision of the Central Government whether a question is one of policy or not shall be final.

Section 50 to 54 relating to certain Protection, power of making rules, regulations and power of removal of difficulties

Section 50 provides that no suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer of such Government, or the Member or Officer or employee of the Council or a mediator, mediation institutes, mediation service providers, which is done or is intended to be done in good faith under Mediation Act, 2023 or the rules or regulations made thereunder. This provision can aid and promote the effective implementation of this Law.

The power of making the rules has been given to the Central Government and the regulations can be made by the Mediation Council. Notification, Rules and Regulation made under this law is to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, rule or regulation or both Houses agree that the notification, rule or regulation should not be issued or made, the notification, rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification, rule or regulation.

If case of any difficulty, the Central Government may make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty. However, no such order shall be made under this section after the expiry of a period of five years from the date of commencement of this Act.

Section 56 and 57 dealing with effect of this law on pending proceedings and transitory provisions

This Act does not apply to, or in relation to, any mediation or conciliation commenced before the coming into force of this Act. The rules in force governing the conduct of court-annexed mediation shall continue to apply until regulations are made under section 15(1). However, the rules shall continue to apply in all court-annexed mediation pending as on the date of coming into force of the regulations.

Lesson 15 - Law relating to Information Technology

1. Google India Private Limited vs. Visakha Industries and Ors. (10.12.2019 - SC)

In this case the Supreme Court decided that Section 79 of Information Technology Act, 2000 as originally enacted, did not deal with the effect of other laws.

The Supreme Court *inter alia* decided that the finding by the High Court that in the case on hand, in spite of the complainant issuing notice, bringing it to the notice of the Appellant about the dissemination of defamatory matter on the part of the first Accused through the medium of Appellant, Appellant did not move its little finger to block the said material to stop dissemination and, therefore, cannot claim exemption Under Section 79 of the Act, as it originally stood, is afflicted with two flaws. In the first place, the High Court itself has found that Section 79, as it originally was enacted, had nothing to do with offences with laws other than the Act. We have also found that Section 79, as originally enacted, did not deal with the effect of other laws. In short, since defamation is an offence Under Section 499 of the Indian Penal Code, Section 79, as it stood before substitution, had nothing to do with freeing of the Appellant from liability under the said provision…..

2. Law of Personal Data Protection

Digital Personal Data Protection Act, 2023 has got the assent of the Hon'ble President of India on 11th August, 2023. This law will be supplemented by delegated Legislation by way of rules to be made by Central Government.

The purpose of this law is to provide the law relating to the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

Important Definitions

- "Board" means the Data Protection Board of India established by the Central Government.
- "Data" means a representation of information, facts, concepts, opinions or instructions in a manner suitable for communication, interpretation or processing by human beings or by automated means;
- "Data Principal" means the individual to whom the personal data relates and where such individual is—

  (*i*) a child, includes the parents or lawful guardian of such a child;

(*ii*) a person with disability, includes her lawful guardian, acting on her behalf;

- "Data Processor" means any person who processes personal data on behalf of a Data Fiduciary.
- "Personal data" means any data about an individual who is identifiable by or I n relation to such data;
- "Personal data breach" means any unauthorised processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to personal data, that compromises the confidentiality, integrity or availability of personal data;
- "Processing" in relation to personal data, means a wholly or partly automated operation or set of operations performed on digital personal data, and includes operations such as collection, recording, organisation, structuring, storage, adaptation, retrieval, use, alignment or combination, indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction;
- "Data Fiduciary" means any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data; and "person" includes—

(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm;
(v) an association of persons or a body of individuals, whether incorporated or not;
(vi) the State; and
(vii) every artificial juristic person, not falling within any of the preceding sub-clauses

Application of the Act

According to section 3, subject to the provisions of this Act, it shall-
(a) apply to the processing of digital personal data within the territory of India where the personal data is collected—

(i) in digital form; or

(ii) in non-digital form and digitised subsequently;

(b) also apply to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India;

(c) not apply to—

(i) personal data processed by an individual for any personal or domestic purpose; and

(ii) personal data that is made or caused to be made publicly available by—

(A) the Data Principal to whom such personal data relates; or

(B) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

Illustration. X, an individual, while blogging her views, has publicly made available her personal data on social media. In such case, the provisions of this Act shall not apply.

Digital Data Protection Act, 2023 will come into force only after notification in the Official Gazette by the Central Government which is yet to be notified.

Lesson 16: Contract Law

Maharashtra State Electricity Distribution Company Limited v. Ratnagiri Gas and Power Private Limited & Ors. decided by Supreme Court on 09th November, 2023

In this case, in order to resolve the issue of non-payment of fixed charges, the first respondent filed a petition under Section 79 of the Electricity Act 2003 *inter alia* seeking the resolution of the issue of shortfall of domestic gas. Central Electricity Regulatory Commission (CERC) allowed the above petition and held the appellant liable to pay fixed capacity charges. CERC's decision was upheld by (Appellate Tribunal For Electricity)APTEL. Later, the appeal was filed before the Hon'ble Supreme Court.

The issue arose before the Supreme Court for consideration was whether the CERC and APTEL were justified in affixing liability to pay fixed charges on the appellant. The dispute primarily turns on the terms of the Power Purchase Agreement (PPA). For the reasons stated hereafter, the court answered the issue in the affirmative.

The Apex Court said that a commercial document cannot be interpreted in a manner that is at odds with the original purpose and intendment of the parties to the document. A deviation from the plain terms of the contract is warranted only when it serves business efficacy better. The appellant's arguments would entail reading in implied terms contrary to the contractual provisions which are otherwise clear. Such a reading of implied conditions is permissible only in a narrow set of circumstances.

Lesson 18 - Law relating to Negotiable Instruments

***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. & Ors.* decided by Supreme Court on 04th September, 2023**

The appellants in these two appeals were the accused before the learned Judicial Magistrate who tried them on a complaint filed by the respondent No. 1 under Section 138 of the Negotiable Instruments Act, 1881 ("N.I. Act"). The learned Magistrate convicted the appellants and directed them to pay the cheque amount with interest thereon @ 9% per annum. An appeal was preferred by the appellants before the Sessions Court. Relying upon Section 148 of the N.I. Act, the Sessions Court granted relief under Section 389 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") subject to condition of appellants depositing 20% of the amount of compensation.

High Court also confirmed the order of the Sessions Court.

In appeal, the Supreme Court held that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount….

Note: Students appearing in June, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 30th November, 2023.