

GENERAL AND COMMERCIAL LAW.

1) a) Under article 14, various rules with respect to permissible classification as evolved in various decisions by Supreme Court in *Kanishkar* & *Dalmiya* v/s Justice Tendulkar.

a) Forbids class legislation does not forbid classification

b) Classification should satisfy two conditions - person grouped together from other left out & object achieved by statute in question.

c) Classification namely geographical or according to objects or occupation.

d) Constitutional law relates to single individual who is class by himself

e) Burden on person who show the transgression of constitutional principles.

1) Constitution is the decision of Constitution Bench of Supreme Court.

2) Public Interest litigation contended Article 14 had been violated.

3) As per new dimensions Article strikes at arbitrariness in state action and ensures a fairness

and equality of treatment.
4) Adherence to rule of equality in public employment is the basic feature of our constitution.

5) Article 14 invalidates discrimination, not only is substantive law but also in procedure.

b] Writs were issued by the High Court, where there was either no remedy available or remedy available was inadequate. Article 226, High Court has the power to issue directions or orders or writs including writs in nature of Habeas Corpus, Mandamus, Quo warrant & Certiorari. Power is exercisable by each High Court throughout the territory in relation to which it exercises jurisdiction. Under Company's Act shareholder has very effective remedies for prevention of operation and mismanagement. Power of High Court to issue these writs is wider than Supreme Court.

a) Application under Article 32 shall not lie in any case unless the right is infringed.

b) Supreme Court can issue a writ against any person or government within territory of India but authority physically resident or located within territorial jurisdiction of particular High Court, cause of action arises within such jurisdiction.

Aggrieved petitioner should first apply to High Court and then to Supreme Court. Jurisdiction of High Court extends enforcement of rights other than fundamental rights provided there is public duty. Supreme Court jurisdiction to issue writs extends to all fundamental rights.

- Directive principles of State Policy are wider and important in Part III of fundamental rights. Court adopted strict view in this respect and ruled that the Directive principle could not override fundamental right. Supreme Court made the observation in State of Madras v/s. Champakam - Directive principle of state policy have to conform to and run as subsidiary to the Chapter of fundamental rights. Fundamental rights were enforceable the Directive principle were not so laws made to implement Directive principles could not take away fundamental rights. They differ from fundamental rights in following aspects :-
- Not enforceable in courts and not justiciable right in favour of individuals.
 - Directives implemented by legislation.
 - Do not take away any legislative power from the appropriate legislation.
 - Court cannot declare any law void.
 - Court cannot competent to compel to carry out directives.
 - It is duty of state to implement the directives.

2] Role & scope of interpretation of statutes -

i) Mischief Rule:- If you have sure and true interpretation four things are considered.

- what was the common law.
- Common law did not provide mischief & defect.
- Question about common wealth.
- True reason of the remedy.

When material words are having two or more meanings you must have sure or be firm with your words which you construct your construction does not ignore plain natural meaning of word which they collect.

ii) Lati Materia:- It relates to same person or thing or to same class of persons or things. The word per must not be confounded with additional words. Phrase applicable to public statutes or general laws made at different times and in reference to same subject. Statutes dealing with same subject matter or forming part of same system, it is well accepted legislative practice to incorporate by reference the provisions of some other Act.

iii) Preamble:- Preamble is a statute which contains generally the motives or inducements thereof and key to open the meaning.

420560950/08/2008.

of the maker of Act and mischief
it was intended to remedy. Two
propositions are quite clear 1) it
may attract useful light as to
what statute intends to reach
2) If enactment is itself clear
and unambiguous no preamble
can qualify or cut down the
enactment.

iv) Schedules. Schedule forms the part
of statute and must be read
together with it for all
purposes of construction but expression
in the schedule cannot control
or prevail against express enactment.
There are two principles of
interpretation → 1) Schedule is to be
used for a certain purpose and
heading of part of schedule
in question shows that it is
prima facie. 2) Language of the
clause be satisfied without
extending it beyond for a
certain purpose. It has in its
own words and terms that go
clearly outside the purpose.

- 3] The salient features of Right to Information' under article 19 are
- This extends all over India except Jammu and Kashmir.
 - This commences 120 days from enactment.
 - Apply to public authorities.
 - All citizens have right to information.
 - Fees will be depending upon the information sought.
 - U/s 8 & 9 some categories of information exempted.
 - Intelligence & security agencies have been exempted subject to certain conditions.
 - Public Information Offices will be responsible to deal with & to assist the information.

b). Award to be set aside under the Arbitration & Conciliation Act 1996-

- Sub section (1) discusses following points-
- In capacity of party.
 - Invalidity of arbitration document.
 - Party was unable to give proper notice and to appoint arbitrator and present his case.
 - Award not in accordance with terms of submission in regard to the dispute.
 - There is no capability of settlement of dispute by arbitration.
 - Award being in conflict with the public policy of India.

420560950/08/2008.

4] b] i) Under article 123 of Constitution of India, the most important legislative power conferred on the president of India is to conditional power.

ii) A writ by court to some person or body to compel it to perform some public duty is called mandamus.

iii) As per Section 54 of Transfer of property Act 1882, a movable property of value of Rs 100 or more can be transferred only by instrument.

iv) Instrument executed outside India may be stamped within 3 months after it has been first received in India.

5] i) 3 months

ii) Court which passed the decree or order.

iii) Custody without warrant.

iv) None of the above.

a). The properties which cannot be treated as a transfer are as

420650950/08/2008.

- 1) Property after the death of person transfer to heir.
- 2) A mere right of re-entry is not transfer.
- 3) An easement cannot be treated as transfer.
- 4) Any personal interest in the property cannot be a transfer.
- 5) A mere right to sue cannot be transferred.
- 6) A public office cannot be transferred.
- 7) Stipends to military, naval, air force & civil pensioners & political pensions cannot be treated as transfer.

5)
a)

b)

10/

5) A document which is apparently an agreement granting a franchise is produced in the court, but is not stamped.

The document can be admitted on payment of penalty. No prosecution can be instituted but penalty has to be paid. The collector can initiate criminal proceedings if he sees reasons thereof.

b) In this example which is about murder case - the statement may not be taken into consideration by the court against Anand as Bisender is being jointly tried. Exception to general rule that confession is only evidence against the person who makes the confession.

c) Where a suit is brought upon an instrument which is not duly stamped, the admission of the contents of the instrument made by the defendant does not avail the complaint and a decree cannot be based on such instrument.

In given case plaintiff stated that hundi had been properly stamped.

d) A & B orally agree to make partnership firm and commence their business also and after one year at the time of execution of partnership firm in writing B refuses to do the agreement.

In such case, No contract to refer present or future difference to arbitration shall be specifically enforced but if any person who has made such a contract and has refused to perform it, sues in respect of any subject which he has contracted to refer the existence of such a contract shall bar the suit.

420560952 / 01 / 2008.

6) In above case information report is lodged against brook for committing one cognizable and three non-cognizable offences. Non-cognizable offences are more than cognizable so in such non-cognizable offences police officer is not authorised to investigate a non-cognizable case without the order of Magistrate having power to try such cases and on receiving the order, the police officer may exercise the same power in respect of investigation. In cognizable office when police officer receives information, he communicates to his superior police officer and any other officer whose duty is to prevent or take cognizance of any such offence. Police officer may arrest the person without order from Magistrate and without warrant.

b) A & B contract to become partners, the contract is not specifying duration of proposed partnership, in such a case contract cannot be specifically enforced since, either A or B might at once dissolve the partnership (Scott vs Raymond).

c) There is no limitation of time in

420560950/08/2008.

in the investigation:
Chapter XXVI prescribe limitation
period for taking cognizance of
certain offences. No court after
expiry of period of limitation
mentioned below:

- a) Six months - offence punishable
with fine only.
- b) One year - offence punishable
with imprisonment for term not
exceeding one year
- c) Three years - offence punishable with
imprisonment for a term exceeding
one year but not exceeding three
years.

d) Under summary trials the case can
be tried and disposed of at
once. Generally it will apply
such offences not punishable
with imprisonment for a term
exceeding two years.
In given case X is
punishable for a term of one
year. So court can take
cognizance of that offence.