

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 19th - 25th Feb 2024**

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## 1. Supreme Court Interim Order on Forest Definition

### Ashok Kumar Sharma, IFS (Retd) & Ors. v. Union of India & Ors.

In a recent development, the Supreme Court of India intervened in a crucial matter concerning the definition of "forest" under the Forest (Conservation) Act. This interim order, issued on February 19, 2024, carries significant implications for forest conservation efforts nationwide.

#### Key Points:

**Interpretation Battle:** The interim order stems from a batch of writ petitions challenging the 2023 amendments to the Forest Conservation Act. Petitioners argued that the amendments narrowed the expansive definition of 'forest' established in the landmark 1996 T.N Godavarman Thirumalpad v. Union of India judgement.

**Judicial Directive:** Led by Chief Justice of India DY Chandrachud, the Supreme Court issued a directive mandating States and Union Territories to adhere to the broader definition of 'forest' as outlined in the Godavarman judgement. This directive stands until the ongoing process of identifying forest lands in government records, following the 2023 amendment, reaches fruition.

**Concerns Raised:** Petitioners expressed apprehensions that the narrowed definition could lead to the diversion of lands, considered forests under the Godavarman judgement, for non-forest purposes during the identification process.

**Court's Roadmap:** Pending completion of the identification process, the Court directed states and union territories to follow the principles established in the Godavarman judgement. Additionally, it mandated the Union of India to issue a circular to ensure compliance. States/UTs must provide comprehensive records of identified forest lands by March 31, 2024, for digitization and publication.

**Expert Committee Role:** Expert committees constituted under Rule 16 must consider the work of previous committees formed under the Godavarman judgement. However, they retain the authority to expand the ambit of forest lands worthy of protection.

**Union Government Stand:** The Union Government defended the amendments, asserting alignment with the Godavarman judgement's directive to protect forests based on the dictionary meaning.

The Supreme Court's interim order serves as a pivotal step in balancing legal amendments with established conservation principles, ensuring continued protection of India's forest wealth amidst evolving regulatory landscapes. This decision not only addresses immediate concerns but also sets a precedent for future environmental litigation, emphasising the judiciary's proactive role in safeguarding natural resources.

## 2. Termination of Woman Nursing Officer

In **UNION OF INDIA vs. EX. LT. SELINA JOHN**, the Supreme Court of India addressed the termination of a woman nursing officer from the Military Nursing Service (MNS) due to marriage. The officer, serving in the MNS, faced discharge upon her marriage to an Army officer, with the termination order citing marriage as the reason, without providing her an opportunity to present her case.

### **Unconstitutional Grounds and Judicial Rebuke:**

Examining the rules governing the MNS, particularly Army Instruction No. 6 of 1977, which allowed for the termination of female officers upon marriage, the Court deemed these rules 'manifestly arbitrary' and unconstitutional. Justices Sanjiv Khanna and Dipankar Datta of the Division Bench strongly rebuked the discriminatory nature of such rules, emphasising that laws and regulations grounded in gender bias violate constitutional principles of non-discrimination and fair treatment.

### **Compensation Awarded and Modified Relief:**

Setting aside the termination order, the Court awarded the petitioner compensation of Rs. 60,00,000 (sixty lakh rupees) as full and final settlement, addressing the injustice suffered due to wrongful termination. While upholding the Armed Forces Tribunal's decision to reinstate the officer, the Court modified the relief by awarding compensation instead of reinstatement, considering the officer's subsequent employment in a private organisation.

### **Directive for Prompt Payment:**

The Court directed the Union to make the compensation payment within eight weeks from the date of the order. Failure to comply within this timeframe would result in an interest penalty of 12 percent per annum until the payment is made.

By striking down arbitrary rules and providing substantial compensation, the Court sends a clear message against gender-based biases in employment practices. This decision not only sets a precedent for ensuring gender equality and fairness in the armed forces' recruitment and employment policies but also serves as a beacon of hope for women officers across the country, affirming their right to equal treatment and protection against discriminatory practices.

### 3. Compensation for Medical Negligence

In a recent ruling, the Supreme Court of India addressed a case of medical negligence where a patient developed hoarseness in his voice due to errors during anaesthesia administration. The patient, now deceased, had initially claimed compensation of Rs. 18,00,000 against the Manipal hospital for the faulty operation resulting in his condition. However, the District Forum and subsequently the National Consumer District Redressal Commission (NCDRC) awarded only Rs. 5,00,000 as compensation, a decision now challenged before the Supreme Court.

**Faulty Operation and Compensation:** The patient developed hoarseness in his voice post-operation, alleging medical negligence during anaesthesia administration. It was claimed that the hospital's delegation of a critical duty to a trainee anaesthetist resulted in paralysis of the left vocal cord due to the faulty insertion of a Double Lumen Tube.

**Compensation Dispute:** The District Forum and NCDRC maintained the awarded compensation at Rs. 5,00,000 without adequate reasoning. However, the Supreme Court found this amount insufficient considering the severity of the case and directed a reevaluation.

**Supreme Court's Ruling:** Justices Hima Kohli and Ahsanuddin Amanullah directed the hospital to pay compensation of Rs. 10,00,000 along with 10% simple interest per annum from the date of filing of the claim petition. The Court criticised the District Forum for not considering all aspects before arriving at the compensation amount.

**Hospital's Defence:** The hospital contended that the District Forum erred in disregarding the evidence of doctors who claimed no wrongdoing in administering anaesthesia through a double-lumen tube. However, the Court disagreed, emphasising the hospital's duty to ensure proper procedures, especially when critical tasks are delegated.

The Supreme Court's decision serves as a reminder to medical institutions regarding their responsibility towards patient safety and quality of care. It also provides solace to victims of medical negligence by addressing their grievances and acknowledging the severity of their suffering.

### 4. Section 34 Petition Over Arbitral Award

**Morgan Securities & Credits Pvt Ltd. vs Samtel Display Systems Ltd.**

**Brief Facts:**

Samtel Colors Limited ("Respondent") obtained an Inter-Corporate Deposit (ICD) facility from Morgan Securities & Credits Pvt Ltd. ("Petitioner"), with the condition of providing pledged shares as security. After the Respondent claimed repayment of the ICD, the Petitioner allegedly withheld the pledged shares, leading to arbitration. The Respondent sought the return of shares, along with other claims. Simultaneously, the Petitioner initiated arbitration against the borrower for unpaid dues.

**Observations by the High Court:**

The Petitioner challenged the arbitral award, primarily citing inconsistencies in findings related to the valuation of pledged shares. The High Court, mindful of the limited scope of interference with arbitral awards, emphasised the arbitrator's role as the final arbiter on factual matters and contractual interpretation.

**Key Points Highlighted by the High Court:**

- **Limited Interference:** The High Court recognized that interference with arbitral awards is permissible only if the award is palpably perverse, where no reasonable person could arrive at the arbitrator's conclusion.
- **Inconsistencies Identified:** Specific findings in the arbitral award revealed contradictions regarding the valuation of shares. While the Respondent failed to prove the market value, the award assumed a value of Rs. 17 per share for certain claims, despite rejecting this value for others.

**High Court's Decision:**

Based on the internal contradictions within the award, particularly regarding claim no.3, the High Court allowed the Section 34 petition, deeming the arbitral award as perverse and patently illegal.

**5. Denial of Permanent Commission for Women Officers in Indian Coast Guard**

Led by Chief Justice of India DY Chandrachud, the bench in **Priyanka Tyagi v. Union of India & Ors.** heard the plea of a woman officer in the Short Service Commission, raising questions about the Union's approach, particularly if it reflected a patriarchal bias despite previous rulings favouring Permanent Commission for women officers in defence services.

Chief Justice Chandrachud emphasised the need for a policy that treats women officers fairly, questioning the absence of Permanent Commission inductions for women in the Coast Guard since 2009. He challenged the government's stance, asking why it seemed reluctant to embrace gender equality in the Coast Guard, especially when other branches of the defence forces had implemented Permanent Commission policies for women.

The Additional Solicitor General (ASG) representing the Union explained the difference between the petitioner's current Short Service Commission and the Permanent Commission she sought. However, the Chief Justice reminded the ASG of previous Supreme Court decisions that allowed Permanent Commission for women officers in the Indian Army and Navy.

Acknowledging the provision for a Permanent Commission of Women in the Indian Coast Guard, albeit limited to 10%, the Chief Justice expressed dissatisfaction, questioning the rationale behind such a quota and whether it implied women were considered lesser beings. He challenged the ASG to explain why the Indian Navy allowed Permanent Commission for women while the Coast Guard seemingly did not.

The Court cautioned the Union to develop a gender-neutral policy promptly and emphasised its commitment to ensuring justice for women in the Indian Coast Guard. Senior Advocate Archana Pathak Dave and Siddhant Sharma Advocate-on-Record represented the petitioner in the case.

## 6. Case of the Week

### **Gherulal Parekh v. Mahadeodas Maiya (AIR 1959 SC 781)**

The case of Gherulal Parekh v. Mahadeodas Maiya (AIR 1959 SC 781) centres on the legality of a partnership agreement specifically formed for wagering transactions, which are essentially bets or speculative ventures, and its standing under the Indian Contract Act, 1872. The core legal issues revolve around the application of Sections 23 and 30 of the Indian Contract Act, 1872, which deal with the legality of the objects and considerations of agreements and the specific treatment of wagering contracts, respectively.

In this landmark case, the Supreme Court was presented with the question of whether a partnership agreement aimed at engaging in wagering transactions was illegal under Section 23 of the Indian Contract Act, 1872, which pertains to the legality of the objects and considerations of agreements. The appellant, Gherulal Parekh, and the respondent, Mahadeodas Maiya, entered into a partnership for the purpose of engaging in forward contracts for the buying and selling of wheat. The agreement stipulated that any profits or losses arising from these transactions would be shared equally. However, after incurring losses, Parekh refused to share the liability, prompting Maiya to sue for recovery.

The Supreme Court, in its analysis, clarified the legal landscape surrounding wagering agreements. While Section 30 of the Contract Act declares wagering contracts to be void, meaning they cannot be enforced by law, it does not categorise them as illegal. Therefore, such contracts are not "forbidden by law" under Section 23, which would render an agreement with an unlawful object or consideration illegal. The Court held that a partnership formed with the intent of entering into wagering transactions is not inherently illegal, as the act of wagering is not considered opposed to public policy under Section 23.

The Court further elaborated that immorality under Section 23 should be confined to cases of sexual immorality and that wagering cannot be regarded as immoral within this narrow definition. As such, a partnership agreement for wagering transactions does not fall under the ambit of being unlawful due to immorality or being contrary to public policy.

This ruling highlighted the difference between contracts that are void and those that are illegal, pointing out that although contracts for wagering are void and cannot be enforced, they are not deemed illegal or in violation of public policy.

## 7. Repeated PYQ

**Q. "Power of the Parliament to amend the Constitution is wide, but not unlimited." Do you agree with this statement? Discuss whether the doctrine of basic structure had reinforced the power of the judicial review under the Constitution.**

**Ans.** The statement "Power of the Parliament to amend the Constitution is wide, but not unlimited" aptly summarises the dual nature of constitutional amendment authority within the Indian legal framework. The Indian Constitution, specifically under Article 368, empowers the Parliament with a broad mandate to amend the Constitution. This provision is foundational for a

dynamic and evolving democracy, allowing for the adaptation of the nation's supreme legal document to the changing needs and aspirations of its people. However, this power is circumscribed by the doctrine of the basic structure, a concept that has emerged as a judicial innovation to ensure that the essence and foundational principles of the Constitution remain inviolable.

### **The Doctrine of Basic Structure and Its Implications**

The doctrine of the basic structure was established in the landmark judgement of *Kesavananda Bharati v. State of Kerala* (1973), where the Supreme Court of India held that while the Parliament possesses the authority to amend the Constitution, this power does not extend to altering the Constitution's basic structure. This doctrine identifies certain elements—such as the supremacy of the Constitution, secularism, separation of powers, and federalism—as the core that gives the Constitution its identity. These elements cannot be amended out of existence, thus ensuring that the fundamental ethos of the Constitution is preserved against any form of legislative adventurism.

### **Reinforcement of Judicial Review**

The doctrine of the basic structure has significantly reinforced the power of judicial review in India. Judicial review, the authority of the judiciary to examine and invalidate legislative and executive actions that it finds in violation of the Constitution, is a cornerstone of Indian democracy. By delineating certain aspects of the Constitution as beyond the purview of parliamentary amendment, the Supreme Court has underscored its role as the ultimate arbiter of the Constitution's integrity. This ensures that amendments to the Constitution do not erode its fundamental values and principles, acting as a check on the Parliament's amendment powers.

### **Landmark Cases and Further Reinforcement**

The doctrine has been reaffirmed and applied in several subsequent landmark cases, including *Minerva Mills v. Union of India* (1980) and *S.R. Bommai v. Union of India* (1994), among others. These cases have not only underscored the importance of the basic structure doctrine but have also expanded its application, thereby fortifying the judiciary's role in protecting the Constitution against possible legislative excesses.

### **A Necessary Balance Between Flexibility and Rigidity**

In conclusion, the statement that the Parliament's power to amend the Constitution is "wide, but not unlimited" reflects the delicate balance that the Indian legal system strives to maintain between flexibility and rigidity. While the Constitution must be a living document, adaptable to the changing needs of society, it is also imperative to safeguard its core principles against transient political pressures. The doctrine of the basic structure serves this very purpose, ensuring that while the Constitution can evolve, its fundamental values and identity remain untouched. The reinforcement of judicial review through this doctrine not only emphasises the judiciary's role in this equilibrium but also ensures that the amendment power is exercised within the confines of constitutional sanctity, thereby upholding the rule of law and democracy.