

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

23rd September – 30th September 2024

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1. Sanctity of Finality of Arbitral Award

The Supreme Court of India, in a recent judgment on **September 27, 2024**, clarified the limited scope of interference by appellate courts under **Section 37 of the Arbitration and Conciliation Act, 1996**.

The Court emphasized that an arbitral award cannot be set aside merely because the appellate court believes that its own view is a better one than that of the arbitral tribunal. This judgment reinforces the autonomy of the arbitration process and upholds the principles of minimal judicial intervention in arbitral awards.

Key Points from the Judgment:

- Limited Scope Under Section 34 and 37:** The Supreme Court bench, comprising Justices P.S. Narasimha and Pankaj Mithal, stated that appellate courts have limited jurisdiction to interfere with arbitral awards, as defined under **Section 34 of the Arbitration Act**.

The bench emphasized that unless an award is proven to be illegal under the grounds mentioned in Section 34 (such as being against public policy, induced by fraud, or in conflict with fundamental principles of Indian law), it cannot be interfered with.

- Arbitral Tribunal's View Prevails:** The Court clarified that even if the appellate court finds that its view is a better interpretation than that taken by the arbitral tribunal, this alone is not sufficient to set aside the award.

The arbitrator's decision should be respected as long as it is based on evidence, is

reasonable, and does not violate substantive provisions of law, the Arbitration Act, or the terms of the agreement between the parties.

3. **Basis of Interference - Section 34:** The Supreme Court outlined that the primary grounds for setting aside an award under **Section 34** include:
 - The award being in conflict with the public policy of India.
 - If the award is induced by fraud or corruption.
 - If the award contravenes fundamental policies of Indian law or morality and justice.
4. The judgment emphasized that the appellate courts must not go beyond these specified grounds when deciding to interfere with or set aside an award.
5. **Arbitrator's Decision Should Stand:** The Supreme Court reiterated that if two views are possible based on the evidence and the terms of the contract, the decision of the arbitrator should prevail. This reinforces the idea that courts should not reappraise evidence or interpret contracts differently unless there is a clear and grave error that meets the criteria laid down in Section 34.

Reference to Judicial Precedents

The judgment referenced past decisions, such as **Bharat Coking Coal Ltd. v. L.K. Ahuja (2001)**, which highlighted that an award is not liable to be set aside merely because it contains errors in law.

The Court also referred to **Dyna Technology Private Limited v. Crompton Greaves Limited (2019)**, which noted that courts should defer to the views taken by arbitral tribunals even when alternative interpretations are possible unless the award demonstrates “unintelligible reasons” or violates the core principles under Section 34.

Implications of the Judgment:

This ruling reaffirms the principle of **finality in arbitration**, where arbitral awards are meant to be conclusive and binding, with minimal court intervention. It underlines that appellate courts must exercise restraint and cannot use their ordinary appellate powers to replace the arbitral tribunal's decision with their own.

By upholding the independence of the arbitration process, the judgment encourages confidence in arbitration as an alternative dispute resolution mechanism, ensuring that parties who opt for arbitration can rely on its outcomes without excessive judicial interference.

2. IHL and Gaza Crisis

The ongoing Gaza crisis, characterized by a surge in violence, military operations, and severe humanitarian challenges, raises critical questions about compliance with **International Humanitarian Law (IHL)**. Also known as the law of armed conflict or the law of war, IHL is a set of rules designed to limit the effects of armed conflict for humanitarian reasons.

It seeks to protect civilians, combatants who are no longer participating in hostilities, and civilian infrastructure from the harm caused by conflict. The principles of IHL are enshrined in various conventions, most notably the **Geneva Conventions of 1949** and their **Additional Protocols**.

IHL Principles and their Applicability to the Gaza Crisis

In the context of the Gaza crisis, both state and non-state actors are bound by IHL, which mandates the protection of civilians and civilian objects and regulates the conduct of hostilities. The primary principles of IHL relevant to the Gaza conflict include:

1. **Principle of Distinction:** This principle requires that all parties to a conflict distinguish between civilians and combatants, and between civilian objects and military objectives. Attacks should be directed only at legitimate military targets. In the context of Gaza, this principle has come under scrutiny as military operations often take place in densely populated urban areas, resulting in significant civilian casualties and damage to civilian infrastructure, including hospitals, schools, and residential buildings.
2. **Principle of Proportionality:** Proportionality in IHL means that even if a military target is lawful, an attack should not cause civilian harm that is excessive in relation to the anticipated military advantage. This principle is particularly relevant when assessing airstrikes or shelling in Gaza that result in high civilian casualties. The challenge lies in ensuring that the military necessity of a particular operation does not disproportionately harm civilians.
3. **Principle of Precaution:** All parties are required to take precautionary measures to minimize harm to civilians. This includes issuing warnings before attacks that could affect civilians, choosing means and methods of warfare that limit damage to civilian life and property, and taking actions to avoid civilian casualties. In the Gaza context, the use of warnings by military forces and the difficulties civilians face in evacuating due to blockades and lack of safe passage raise complex questions about compliance with this principle.
4. **Protection of Civilian Objects:** IHL provides that civilian infrastructure, such as schools, hospitals, and homes, should not be the object of attack unless they are being used for military purposes. In Gaza, the targeting of civilian buildings, which may have dual-use or perceived military significance, has raised concerns about adherence to this aspect of IHL. Additionally, the destruction of essential services, such as water and power supply systems, significantly affects civilian well-being and has humanitarian implications.

International Legal Accountability

The international community, including the United Nations and various human rights organizations, has repeatedly called for adherence to IHL by all parties involved in the Gaza conflict.

Concerns have been raised regarding possible violations of IHL principles, and there have been calls for investigations into alleged war crimes and accountability for those responsible.

The **International Criminal Court (ICC)** is currently examining the situation in Palestine, including potential breaches of IHL, to determine whether legal action should be pursued.

Additionally, international humanitarian organizations have been advocating for an immediate ceasefire, protection of civilians, and unrestricted access for humanitarian aid. The role of **mediating actors**, such as Egypt and Qatar, has been crucial in negotiating temporary ceasefires to address the immediate humanitarian needs and prevent further escalation.

3. Contempt of Courts and Media Trial

A media trial occurs when media outlets play the role of an investigator, prosecutor, and judge, effectively influencing public perception on a matter sub judice (under judicial consideration). The media often debates cases publicly, speculating on the guilt or innocence of parties involved, sometimes sensationalizing facts, and, in some instances, creating public pressure on the courts.

While the media's role is essential for an informed society, unchecked and sensationalist reporting can interfere with the administration of justice, influence court proceedings, and even affect the rights of the accused to a fair trial, thereby raising issues of contempt of court.

Legal Framework for Contempt in Media Trials

The *Contempt of Courts Act, 1971*, and relevant constitutional provisions seek to balance the freedom of the press with the need for an impartial and fair judicial process. Two primary forms of contempt under the Act that are relevant to media trials are:

1. **Criminal Contempt (Section 2(c))**: Criminal contempt includes actions that:
 - Scandalize or tend to scandalize, or lower the authority of the court.
 - Prejudice or interfere with the due course of any judicial proceeding.
 - Obstruct or tend to obstruct the administration of justice.

Media coverage that crosses these boundaries—by scandalizing the judiciary, prejudging issues before the court, or influencing public opinion against a fair trial—can be held liable for criminal contempt.

2. **Prejudicial Publication (Section 3)**: Section 3 protects innocent publication or distribution of any matter not known to be pending before the court. However, once it is known that a case is under judicial consideration, further publication must be carefully conducted to avoid prejudging the court's proceedings.

Fair Criticism vs. Contempt (Section 5): Section 5 allows for fair and accurate reporting and criticism of judicial acts. However, this must be done in good faith, and criticism should not impede the ongoing judicial process or interfere with justice.

Several landmark cases in India have addressed the challenges posed by media trials and their implications for contempt of court:

1. **Sahara India Real Estate Corp. Ltd. v. SEBI (2012):** The Supreme Court held that freedom of speech must be balanced against the right to a fair trial. The Court emphasized that the media must not publish anything that prejudices the rights of the accused or interferes with the administration of justice. The Court also acknowledged the possibility of a "gag order" or postponement of reporting in exceptional circumstances to ensure a fair trial.
2. **State of Maharashtra v. Rajendra Jawanmal Gandhi (1997):** In this case, the Supreme Court observed that a trial by media, when a case is still sub judice, could distort the course of justice, prejudicing the minds of the judges and the general public. It held that media coverage should be restrained when it might affect the right of the accused to a fair trial.
3. **Arushi Talwar Case (2013) and Rhea Chakraborty Case (2020):** In recent years, these high-profile cases witnessed intense media scrutiny, often bordering on the sensational. Extensive media coverage, revealing alleged facts and speculating on outcomes, brought to light the conflict between free speech and fair trial rights, often resulting in public opinion being shaped before any judicial determination.

Balancing Free Press and Fair Trial

Freedom of Speech vs. Fair Trial: The media enjoys the fundamental right to freedom of speech and expression under **Article 19(1)(a)** of the Constitution. However, this right is subject to reasonable restrictions, including "contempt of court" as listed under **Article 19(2)**. A balance must be struck between a free press and the right to a fair trial under **Article 21** (Right to Life and Personal Liberty) of the Constitution.

Contempt as a Check on Media Trials: Contempt of court provisions serve as a legal check against excessive or prejudicial media trials. However, they should not be misused to suppress legitimate journalistic inquiry or constructive criticism of the judiciary. Courts have emphasized that the media must maintain self-regulation and refrain from passing judgments on matters still before the court.

Guidelines and Ethical Reporting: The Press Council of India has issued guidelines for responsible reporting, particularly in sub judice matters. The "**Guidelines on Reporting of Court Proceedings**" require that media organizations avoid pre-judging issues, revealing sensitive evidence, or interfering with the right of an individual to a fair trial.

The phenomenon of media trials has necessitated a delicate balancing act between two foundational principles of democracy: a free press and the right to a fair trial.

While the law of contempt of court is a crucial tool to protect the integrity of the judiciary and ensure impartial administration of justice, it must be applied judiciously to prevent abuse or the undue restriction of journalistic freedom.

At the same time, the media must uphold the principles of fairness, objectivity, and ethical reporting, particularly in cases pending before courts, to preserve the sanctity of the judicial process and the fundamental rights of all parties involved.

Section 138 of the Negotiable Instruments Act, 1881

Section 138 of the *Negotiable Instruments Act, 1881* deals with the criminal liability arising from the dishonor of a cheque due to insufficiency of funds or other reasons such as the closure of an account.

Key Elements of Section 138:

1. **Issuance of Cheque for the Discharge of Debt or Liability:** The cheque must have been issued to discharge, in part or full, a legally enforceable debt or other liability. If the cheque is given as a gift, donation, or for any other reason without any debt or liability, Section 138 is not applicable.
2. **Dishonour of Cheque:** The cheque must be presented to the bank for payment within its validity period (usually 3 months from the date it was drawn). If the cheque is dishonored by the bank due to "insufficiency of funds" in the account of the drawer or if it exceeds the amount arranged to be paid, it is deemed to be a default under Section 138.
3. **Notice to the Drawer:** Once a cheque is dishonored, the payee (or the holder in due course) must issue a written notice to the drawer of the cheque, within **30 days** of receiving information about the dishonor from the bank. The notice must demand payment of the amount within **15 days** from the date of receipt of the notice.
4. **Failure to Pay Within 15 Days:** If the drawer fails to make the payment within 15 days of receiving the notice, the payee has the right to file a complaint in a court of competent jurisdiction within **30 days** after the expiry of the 15-day period.
5. **Penalties:** If found guilty under Section 138, the drawer may face:
 - Imprisonment for a term which may extend to **two years**; and/or
 - A fine which may extend to **twice the amount** of the cheque.

Exceptions and Defenses:

Section 138 will not apply in certain circumstances, such as:

- The cheque was issued as a gift, donation, or for any reason other than a legally enforceable debt or liability.
- The payee did not issue the notice within the stipulated time.
- The drawer made the payment of the dishonored cheque within 15 days of receiving the notice.

Judicial Interpretations:

1. **Strict Liability Offense:** Section 138 has been interpreted as a strict liability offense, meaning that once the cheque is dishonored and the legal process is followed correctly, the drawer is presumed to have committed an offense unless valid defenses are provided.
2. **Presumption of Legally Enforceable Debt:** Under **Section 139** of the Act, it is presumed that the cheque was issued for the discharge of a legally enforceable debt or liability. The burden of proof lies on the drawer to rebut this presumption.

3. **Compounding of Offense:** The Supreme Court has encouraged the compounding of offenses under Section 138, which means the matter can be settled out of court if both parties agree, reducing the need for lengthy litigation.

Defenses Against Section 138

- **Incapacity to Pay:** The drawer can argue that there were genuine reasons for the insufficiency of funds.
- **Improper Notice:** If the notice was not served correctly or within the stipulated time, the complaint may be dismissed.
- **Cheque Issued as Security:** The defense may claim that the cheque was given merely as a security and not for payment.

Weekly Focus

Case of the Week : A.K. Kraipak v. Union of India (1969) 2 SCC 262

In this case, the SC held that Principles of natural justice supplement the law of the land. In other words, even if the statute is silent on principles of natural justice, it is incumbent upon the authorities to follow the principles of natural justice in its proceedings.

The case arose when a group of officers, including A.K. Kraipak, challenged the selection process for the Indian Forest Service in the state of Jammu and Kashmir.

During the selection process, one of the members of the selection board was a candidate for the position being considered. The appellants argued that this dual role led to a conflict of interest and bias, thus violating the principles of natural justice.

Key Issues

1. **Bias and Conflict of Interest in Administrative Proceedings:** The primary issue before the Court was whether the selection of officers, in which a member of the selection board was also a candidate, violated the principles of natural justice due to the presence of bias.
2. **Distinction Between Administrative and Quasi-Judicial Actions:** A secondary issue was whether the selection process was purely an "administrative" action, and if so, whether the principles of natural justice applied to it.

Judgment

The Supreme Court of India, in this significant decision, held that the principles of natural justice are applicable to all administrative proceedings that affect the rights of individuals, irrespective of whether the action is classified as "administrative" or "quasi-judicial."

1. **Abolition of the Rigid Distinction Between Administrative and Quasi-Judicial Functions:** The Court observed that the distinction between "administrative" and "quasi-judicial" actions had become largely irrelevant. What mattered was the effect of the decision on the rights of individuals. If a decision-making process affects the

rights of a person, the principles of natural justice must be followed, regardless of the nature of the function being performed.

2. **Bias and Natural Justice:** The Court emphasized that justice should not only be done but must also appear to be done. Since one of the members of the selection board was also a candidate, there was a reasonable likelihood of bias, which rendered the selection process unfair. Consequently, the process was held to be in violation of the principles of natural justice.
3. **Scope of Judicial Review:** The judgment established that administrative actions are subject to judicial review, particularly when they violate principles of natural justice. The Court's role in judicial review is to ensure that the procedure followed in administrative decision-making is fair, unbiased, and in accordance with natural justice.

LAW OPTIONAL AND GS II OVERLAP: Vulnerable Section of Society and Constitution of India

The Indian Constitution stands as a guardian for the vulnerable, aiming to eradicate historical injustices and promote a society where all citizens have equal opportunities and access to rights. The principles enshrined within the Constitution represent not only legal guarantees but also a social commitment to building a just and inclusive society.

Constitutional Provisions for Vulnerable Sections: The Indian Constitution provides a range of rights and protections to safeguard the interests of vulnerable sections of society. It aims to secure equality, abolish discriminatory practices, and establish social justice as the cornerstone of governance.

1. Fundamental Rights (Part III of the Constitution): The Fundamental Rights guarantee every individual certain rights essential to their well-being and dignity. Key provisions include:

- *Article 14 (Right to Equality):* Guarantees equality before the law and equal protection of laws to all persons, aiming to prevent discrimination.
- *Article 15 (Prohibition of Discrimination):* Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, while allowing for special provisions to promote the interests of women, children, SCs, STs, and OBCs.
- *Article 16 (Equality of Opportunity in Public Employment):* Guarantees equality of opportunity in matters of public employment and permits reservation for backward classes, thereby addressing systemic inequalities.
- *Article 17 (Abolition of Untouchability):* Abolishes "untouchability" and forbids its practice in any form, protecting the rights and dignity of SCs.
- *Article 23 (Prohibition of Human Trafficking and Forced Labor):* Prohibits human trafficking, bonded labor, and other forms of exploitation.

2. Directive Principles of State Policy (Part IV of the Constitution): The Directive Principles are guidelines for the state to promote social and economic welfare, addressing inequalities and providing for vulnerable sections. Key directives include:

- *Article 39 (Protection of Certain Principles of Policy)*: Mandates the state to direct its policies towards securing equality of resources and opportunities, particularly for women and children.
- *Article 46 (Promotion of Educational and Economic Interests of SCs, STs, and OBCs)*: Directs the state to promote the educational and economic interests of these communities and protect them from social injustice and exploitation.
- *Article 41 (Right to Work, Education, and Public Assistance)*: Emphasizes provisions for securing work, education, and public assistance in cases of unemployment, old age, sickness, and disability.

3. Special Provisions for Specific Groups: To address the unique challenges faced by certain vulnerable groups, the Constitution includes several targeted provisions:

- **Reservations in Legislature:** *Articles 330 and 332* provide for the reservation of seats in the House of the People (Lok Sabha) and the Legislative Assemblies of the States for SCs and STs, ensuring their political representation.
- **Reservations in Educational Institutions and Employment:** *Article 15(4) and Article 16(4)* enable reservations in educational institutions and public employment for SCs, STs, and OBCs. The *103rd Constitutional Amendment Act* further introduced reservation for Economically Weaker Sections (EWS) in higher educational institutions and government jobs.
- **Protection of Women and Children:** The Constitution grants special provisions for the protection of women and children. For instance, *Article 15(3)* allows the state to make special provisions for women and children, acknowledging their vulnerability and the need for affirmative action.
- **Rights of Minorities:** *Article 29 and Article 30* protect the cultural and educational rights of minorities, allowing them to preserve their language, script, and culture and establish educational institutions of their choice.

Contemporary Challenges

Despite the constitutional safeguards, vulnerable sections of society continue to face challenges, such as inadequate implementation of laws, socio-cultural prejudices, and economic disparities.

Law and GS IV : Probity in Governance and Separation of Power

Probity in governance and the doctrine of separation of powers are fundamental principles in the Indian constitutional framework. Both concepts play a pivotal role in ensuring a transparent, accountable, and balanced system of governance.

The principles of probity in governance and separation of powers are deeply intertwined and mutually reinforcing. Probity demands that every organ of the state act with integrity, transparency, and accountability in its designated functions.

The doctrine of separation of powers, on the other hand, ensures that power is not concentrated in any one organ, providing a framework within which probity can be effectively maintained.

Definition and Context

Probity in governance refers to the adherence to the highest standards of integrity, honesty, and transparency in public affairs and governmental functions.

The concept encompasses the ethical framework within which government officials operate, aiming to uphold the values of accountability and responsible conduct. Probity is not just an abstract ideal but a tangible expectation of public service in a democratic society.

In India, the emphasis on probity has increased in recent years, particularly against the backdrop of corruption scandals and the abuse of public office. With the establishment of institutions like the *Central Vigilance Commission (CVC)*, the Lokpal and Lokayuktas, and the introduction of legal frameworks such as the Right to Information Act, 2005 (RTI), which collectively work to enhance transparency and accountability in public administration.

Constitutional Provisions

The principle of probity is not explicitly enshrined in the Indian Constitution but has evolved through judicial interpretations. Articles such as Article 14 (Right to Equality), Article 19 (Freedom of Speech and Expression), and Article 21 (Right to Life and Personal Liberty) collectively underline the necessity of fair, just, and accountable governance.

Court's Interventions

The Supreme Court of India has played a crucial role in interpreting probity in governance through landmark cases.

For instance, in *Vineet Narain v. Union of India (1998)*, the Court emphasized the need for an independent mechanism to investigate corruption among high-ranking officials, thereby reinforcing the need for probity in governance.

Similarly, in the 2G Spectrum Case (*Centre for Public Interest Litigation v. Union of India, 2012*), the Court's intervention demonstrated how the judiciary can uphold probity by canceling licenses granted through arbitrary and corrupt practices.

Both are complimentary

For instance, the Legislature, in its law-making role, is expected to act with probity by ensuring that laws are passed in the public interest, transparently, and with due deliberation.

The Executive, tasked with implementing laws, must do so with integrity and efficiency, adhering to ethical standards. Meanwhile, the Judiciary plays a critical role in upholding probity by interpreting laws, ensuring their constitutionality, and acting as a watchdog against misuse of power by the other branches.