Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics
Date - 25th - 31st Aug 2025

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1 . Conviction Under Section 138 NI Act Post-Settlement:

The Supreme Court in *Gian Chand Garg v. Harpal Singh & Anr.* (2025) has reiterated the principle that a conviction under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), cannot be sustained once the parties enter into a lawful compromise. The appellant, convicted by the trial court and whose revision was dismissed by the High Court, sought modification based on a subsequent settlement deed wherein the complainant acknowledged receipt of the full default sum. The High Court rejected this plea on technical grounds.

The Supreme Court, setting aside the concurrent findings, emphasized the legislative intent behind Section 147 NI Act, which renders cheque dishonour cases compoundable. The bench of Justices Aravind Kumar and Sandeep Mehta observed that once the complainant voluntarily enters a compromise, continuing with penal proceedings defeats the object of compounding.

Reliance was placed on ***M/s Gimpex Pvt. Ltd. v. Manoj Goel* (2021)**, where it was held that parties cannot pursue both the original complaint and subsequent settlement simultaneously.

This ruling reinforces the judicial trend, beginning with *Damodar S. Prabhu v. Sayed Babalal H.* (2010), towards encouraging settlements to reduce docket burden while preserving fairness. By setting aside the conviction, the Court reaffirmed that Section

138 proceedings, though penal in nature, ultimately safeguard private financial interests, which may be resolved through compromise without undermining public justice.

2. Delay in Pronouncement of Reserved Judgments by HC

In Ravindra Pratap Shahi v. State of U.P., SLP (Crl.) Nos. 4509–4510/2025, the Supreme Court expressed serious concern over inordinate delays in delivery of judgments by High Courts after reserving matters for pronouncement. The Court noted that such delays undermine litigants' right to seek timely remedies and erode public faith in the judicial process.

A bench of Justices Sanjay Karol and Prashant Kumar Mishra reiterated the binding force of **Anil Rai v. State of Bihar (2002),** which directed that if a judgment is not pronounced within six months of being reserved, parties may move the Chief Justice for reassignment. Strengthening this mandate, the Court directed that the Registrar General of each High Court must prepare monthly lists of reserved-but-undelivered judgments.

If a judgment remains pending beyond three months, the matter must be placed before the Chief Justice, who must either direct the concerned Bench to deliver judgment within two weeks or reassign the case.

The Court also deprecated the practice of pronouncing final orders without reasoned judgments, stressing that it deprives litigants of effective appellate remedies. This concern echoed the Court's earlier remarks in **Ratilal Jhaverbhai Parmar v. State of Gujarat (2024).**

The case arose from an appeal pending since 2008, where the Allahabad High Court had reserved judgment in 2021 but failed to pronounce it. The Supreme Court, calling the delay **"shocking and surprising**," directed immediate corrective measures.

This ruling provides that timely pronouncement of judgments is integral to Article 21's guarantee of speedy justice, and strengthens institutional accountability within High Courts.

3.Non-Signing of Arbitration Agreement Not Fatal if Consent

In a ruling, the Supreme Court in *Glencore International AG v. Shree Ganesh Metals & Anr.* (2025) held that **mere non-signing of an arbitration agreement will not invalidate it if parties have otherwise consented to arbitration**.

A bench of **Justices Sanjay Kumar and Satish Chandra Sharma** set aside the Delhi High Court's refusal to refer parties to arbitration solely on the ground that Respondent No.1 had not signed the arbitration clause. The Court emphasized that **consent was manifested through email correspondence**, thereby satisfying the

requirement of Section 7(3) of the Arbitration and Conciliation Act, 1996, that the agreement must be "in writing."

The Court clarified that **Section 7(4)** only prescribes illustrative circumstances where an arbitration agreement may be inferred — through exchange of letters, telecommunication, or pleadings — and does not mandate a physical signature in all cases. It reiterated the principle from *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pvt. Ltd.* (2015), where it was held that commercial documents with arbitration clauses must be construed to **uphold rather than defeat arbitration**.

The judgment stressed that in the era of **e-commerce and digital transactions**, consent can be evidenced by electronic communications, and **signature is not a formal requirement** under Sections 7(4)(b), 7(4)(c), or 7(5). If parties are demonstrably *ad idem* on arbitration, refusal to enforce the clause merely due to absence of signature would undermine the pro-arbitration policy of Indian law.

Accordingly, the Court allowed the appeal and directed the High Court to refer the dispute to arbitration in accordance with law.

4. Death Penalty Sentencing Can Be Reopened via Article 32

the Supreme Court in *Vasanta Sampat Dupare v. Union of India*, W.P. (Crl.) No. 371/2023, held that **death penalty cases may be reopened under Article 32 of the Constitution where sentencing suffers from violation of procedural safeguards**.

A bench of **Justices Vikram Nath, Sanjay Karol, and Sandeep Mehta** emphasized that Article 32, being the bedrock of constitutional remedies, empowers the Court to correct breaches of fundamental rights arising from defective sentencing procedures. The Court ruled that **where the *Manoj v. State of Madhya Pradesh* (2022) guidelines on individualized sentencing and mitigating factors are ignored**, reopening is justified to safeguard rights under **Articles 14 and 21**.

The Court, however, added a **note of caution**: Article 32 cannot become a "routine pathway" to revisit concluded matters. Relief will be restricted to cases where **serious breaches undermine dignity, fair process, and equal treatment**.

In Dupare's case, while the conviction for rape and murder of a minor was upheld, the Court **set aside the 2017 sentencing order** affirming his death penalty and directed that the matter be placed before **CJI BR Gavai** for fresh consideration of sentence in conformity with *Manoj*.

The Court rejected the State's contention that Dupare's sole remedy was a curative petition, holding instead that **constitutional guarantees override procedural finality** in cases of capital punishment.

5. Belgium's Recognition of Palestine and Sanctions on Israel

In a significant diplomatic and legal development, **Belgium has declared its intention to formally recognize the State of Palestine at the upcoming UN General Assembly in September 2025**. This move places Belgium among a growing bloc of European and Global South nations advancing recognition as a means of reviving the **two-state solution**, long endorsed by the UN but stagnating in practice.

Belgium's decision comes against the backdrop of the **continuing Gaza conflict** and increasing international criticism of Israel's settlement expansion in the West Bank. Citing **violations of international law**, Belgium will accompany recognition with **targeted sanctions**: bans on goods originating from Israeli settlements, restrictions on public contracts with entities linked to such settlements, and limitations on financial dealings. These sanctions are grounded in the principle of **non-recognition of illegal territorial acquisition**, consistent with **Article 41 of the International Law Commission's Draft Articles on State Responsibility**, which obliges states not to recognize or assist unlawful acts.

This development carries both **symbolic and legal weight**. Symbolically, it reinforces Palestine's pursuit of full UN membership and strengthens its claim to statehood under the **Montevideo Convention criteria**. Legally, it may set a precedent within the EU, where debates over sanctions and recognition remain contested. Belgium's actions align with recent ICJ pronouncements affirming the illegality of settlements and reflect the **emerging trend of conditioning bilateral relations on adherence to international humanitarian law**.

While recognition alone does not resolve the conflict, Belgium's dual approach—diplomatic recognition combined with economic sanctions—marks a **new assertiveness in European foreign policy**, potentially reshaping the legal landscape of the Israeli-Palestinian question.

Weekly Focus

Jus Cogens under International Law

Jus cogens is a fundamental principle of international law [VCLT] that refers to norms that are considered to be of such importance that they cannot be violated by any state. In other words, these norms are considered to be non-derogable, meaning that they cannot be set aside, even by agreement between states. This article will provide an overview of jus cogens under international law, including its historical background, characteristics, examples, and enforcement.

Historical Background of Jus Cogens: The concept of jus cogens has its roots in natural law theory, which holds that certain moral principles are inherent in the nature of human beings and the universe. However, the modern concept of jus cogens emerged after World War II, as part of the effort to establish a rules-based international order. Jus cogens was first recognized in the 1969 Vienna Convention

on the Law of Treaties, which states that a treaty is void if it conflicts with a peremptory norm of general international law.

Characteristics of Jus Cogens

There are three main characteristics of jus cogens norms:

1. Non-derogability: Jus cogens norms cannot be waived or set aside by treaty or other agreement between states.
2. Universality: Jus cogens norms apply to all states, regardless of whether they have ratified specific treaties or not.
3. Peremptory norm: Jus cogens norms are considered to be fundamental to the international legal system and cannot be overridden by other norms or principles.

Enforcement of Jus Cogens Norms: Jus cogens norms are binding on all states, and states have an obligation to respect and uphold them. International organizations such as the International Court of Justice and the International Criminal Court have a role to play in enforcing jus cogens norms, and individuals and groups can also seek redress for violations of jus cogens norms through domestic and international legal channels. However, there are also challenges in enforcing jus cogens norms, including the reluctance of some states to recognize and abide by them.

Jus cogens is a crucial concept in international law, as it reflects the fundamental values and principles that underpin the international legal system. The recognition and enforcement of jus cogens norms is essential to the protection of human

PYQ Solution

"The Criminal justice is administered in India by punishing the wrongdoer and the object of punishment is viewed differently by different criminologists." Elucidate. (10 MARKS)

The administration of criminal justice in India is indeed rooted in the punishment of wrongdoers. However, the underlying purpose and philosophy of this punishment have been a topic of debate and diverse viewpoints among jurists, legal theorists, and criminologists. The objectives of punishment can be understood through various theories propounded by these experts:

1. **Retribution Theory:** This is one of the oldest forms of justification for punishment, rooted in the ancient "an eye for an eye" mentality. It views punishment as a means to seek vengeance or retribution for the wrong done. The wrongdoer should suffer in a manner proportionate to the harm they have inflicted on the victim or society. Critics argue that this approach is backward-looking and can perpetuate a cycle of violence.

2. **Deterrence Theory:** The primary aim here is to deter or discourage the wrongdoer (specific deterrence) and the general public (general deterrence) from committing crimes. The belief is that the fear of punishment will discourage potential offenders. Some argue that severe punishments might not always lead to reduced crime rates, especially if the probability of getting caught is low.
3. **Rehabilitation Theory:** It focuses on transforming the offender into a law-abiding citizen. Punishment is seen as a means to reform the offender, providing them with education, vocational training, or therapy. Skeptics question the effectiveness of rehabilitation programs, especially for repeat offenders.
4. **Reformation Theory:** This theory, closely related to rehabilitation, aims at reforming the character and behavior of the convicted person, ensuring they do not commit the crime again. The challenge lies in genuinely ensuring that the convict has reformed and is not merely feigning transformation.
5. **Prevention Theory:** The goal is to prevent the crime by disabling the offender. Incarceration, for example, keeps the criminal away from society, thereby preventing further offences for the duration of imprisonment. While it offers immediate protection to society, it doesn't address the root causes of criminal behaviour.
6. **Restorative Justice:** This is a more holistic approach, focusing on the needs of victims, communities, and offenders. It seeks to restore harmony and address the harm done, often through reconciliation and reparations. Its applicability can be limited, especially for heinous crimes where reconciliation might not be feasible or desirable.

In India, the criminal justice system has evolved to recognize multiple objectives of punishment. For instance, the Indian Penal Code and the Code of Criminal Procedure often emphasise deterrence and retribution, especially for severe crimes. However, there's an increasing recognition of the value of rehabilitation, particularly for juvenile offenders.

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