

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 28th May - 3rd June 2023**

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## 1. Jallikattu law Upheld : Animal Welfare Board of India & Ors versus Union of India & Ors

The Supreme Court of India, in a unanimous decision (**Animal Welfare Board v UOI**), upheld the laws passed by Tamil Nadu, Karnataka, and Maharashtra legitimizing traditional bovine sports, including jallikattu, kambala, and bullock-cart racing. The court noted that animals are not granted the protection of fundamental rights under the Indian Constitution and that its jurisdiction does not extend to offering absolute protection from any manner of pain and suffering inflicted on them.

The controversy around jallikattu began in 2007 when the Madras High Court initially banned the practice, a ban that was later lifted by the Supreme Court in 2008 with a stipulation that unnecessary pain must not be inflicted on bulls. Over the years, several legislations and amendments were passed at state and central levels to control or permit these sports, each being contested in courts, leading to this recent judgment.

### Legal and constitutional issues

The legal and constitutional issues surrounding this case largely involve the balance between cultural practices and animal rights. The Prevention of Cruelty to Animals Act, 1960, which aims to prevent the infliction of unnecessary pain or suffering on animals, played a key role in the legal discourse.

The Supreme Court previously held certain practices in these sports to be in violation of this Act, but the recent judgment is based on the view that new state laws have sufficiently mitigated the cruelty involved in these sports.

However, various animal rights activists and organizations have voiced their disappointment at this decision, citing the continued suffering and deaths of both humans and animals involved in these sports. They argue that these practices are cruel and that their cultural significance does not justify the harm they cause.

It's important to note that the Supreme Court, in upholding the state laws, seems to be suggesting a position where cultural practices can be balanced with animal welfare, rather than completely outlawing such practices. This could have significant implications for future cases involving animal rights and cultural traditions in India

1. **Animals' Rights:** The petitioners had argued that animals should be accorded the protective umbrella under Article 21 of the Constitution, as sentient beings have the natural right to live with dignity without any infliction of cruelty. The court, however, ruled that the Constitution does not recognize any fundamental rights for animals, leaving this matter for determination by the appropriate legislative body.
2. **Degree of Pain and Suffering:** The court noted that the focus should not be on causing pain and suffering but on the degree of pain and suffering a sentient animal is subjected to while being compelled to undertake certain activities for the benefit of human beings. The court's jurisdiction does not extend to providing absolute protection to animals from any manner of infliction of pain and suffering.
3. **Bovine Sports as Part of Culture and Tradition:** The court acknowledged that jallikattu is a part of the culture and tradition of Tamil Nadu, unlike the view adopted in the previous judgment A. Nagaraja. The court stated that the Amendment Acts introduced a new regime for conducting sports, which is not flawed as it has received presidential assent.
4. **Substantial Change in Practices:** The expressions 'jallikattu', 'kambala', and 'bull-cart race' have undergone "substantial change" in the manner they used to be practised or performed. The court expressed satisfaction that a large part of pain-inflicting practices are "substantially diluted" with the introduction of the statutory instruments
5. **Legality of the Amendment Acts:** The court upheld the legality of the Amendment Acts passed by the state legislatures of Tamil Nadu, Karnataka, and Maharashtra. The nature and manner in which the sports were conducted have been altered due to the Amendment Acts and their consequential Rules and Notifications, and hence they are not void
6. **Strict Enforcement:** The court directed that the law contained in the Amendment Acts, and associated Rules and Notifications shall be strictly enforced by the authorities.
7. **Risks to Humans:** The court addressed the petitioners' contention that jallikattu is dangerous to humans as well. It referred to the principle of common law, voluntary non fit injuria, which means if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party.
8. **Survival of Native Breed of Cattle:** The court addressed the argument that prohibition of the bovine practice could result in the "ultimate collapse of a particular genre of cattle" useful for agricultural purposes. However, it rejected the argument that the Amendment Acts were passed for the purposes of preservation, protection, and improvement of stock and prevention of animal diseases, veterinary training, and practice

## 2. Copyright and AI generated Content

In India, the issue of copyright in relation to AI-generated content is still a subject of debate and does not have explicit legislative provisions specifically addressing this matter. The Copyright Act of 1957, which governs copyright law in India, does not specifically mention AI-generated content or provide clear guidelines on ownership and protection of such content.

Under the current legal framework, copyright protection in India is primarily granted to works that are created by human authors. Since AI-generated content is produced by algorithms or computer systems without direct human involvement in the creative process, it raises questions about the eligibility for copyright protection and ownership of such content.

### Fair use Doctrine Applicable?



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Shubham Jain, AIR- 152  
Law optional, UPSC 2022



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The fair use doctrine allows for the use of a copyrighted work without the owner's permission for purposes such as criticism, comment, news reporting, education, scholarship or research. In India, standard exceptions or defences to copyright infringement are listed in Section 52 (certain acts not to be infringement of copyright) of the Copyright Act, 1957.

The determination of fair use is a complex matter that involves both legal and factual considerations, and is dependent on the specific circumstances of each case.

The issue around fair use protection becomes confusing when it comes to AI, as currently there is no established legal precedent that recognises the use of copyrighted data for AI training as fair use. If courts rule that copyrighted material cannot be used to train large-scale AI models, it would significantly impact the training process of these models. On the other hand, if the courts declare that these models can be trained on any data, whether copyrighted or not, it could have significant implications for individuals who own images that are used in the training process.

Despite the lack of a legal precedent, the four-factor test laid down by the Kerala High Court in the case of Civic Chandran versus C. Ammini Amma (1996) can be useful when determining if a use is considered fair use. It is similar to the four-factor test of the US fair use doctrine. These factors are:

- The purpose of the use, including whether it is for commercial or non-profit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in comparison to the entire copyrighted work
- The impact of the use on the potential market or value of the copyrighted work

### 3. Preventive Detention Under Constitution

The article discusses the issue of preventive detention in India and the role of the 44th constitutional amendment in regulating it. It has been over 43 years since this amendment, which places restrictions on preventive detention, was passed by the Parliament and signed by the President, but it has yet to be implemented fully.

The Supreme Court's recent comments on the need to check the abuse of the state's power of preventive detention are appreciated. However, the article criticizes the Court for not taking substantial actions to curb this issue. The use and abuse of long-term preventive detention continue to tarnish India's human rights record. The state and Union governments have enacted and misused various pieces of legislation to preventively detain individuals for years without charging them with a crime..

The 44th constitutional amendment was introduced in response to the abuses of power during the Emergency period. It sought to limit the government's authority to exercise extraordinary powers and added additional safeguards to the Constitution. Section 3 of the amendment reduced the maximum period of detention from three months to two months and made appointments to 'advisory boards' subject to the recommendations of the Chief Justices of high courts

The amendment was debated thoroughly in the Parliament. The debates involved discussions about the Janata Party's election promises to restrain the government's power to authorise preventive detention and the experiences during the Emergency period. The drafters of the 44th amendment aimed to close loopholes that could allow future abuse of preventive detention

Section 3 of the amendment was a compromise solution with those who wished to eliminate preventive detention altogether from the Constitution. If preventive detention was not going to be abolished entirely, safeguards had to be introduced, and the time in detention had to be as short as possible. The debates weighed the pros and cons of preventive detention in India

Some considered preventive detention necessary in extreme situations to combat crimes such as smuggling and to deal with special circumstances like instability. Many others contended that regular criminal and security laws, rather than preventive detention laws, could and should be enforced to address these issues.

### 4. Ordinance to Regulate NCT Delhi

National Capital Territory of Delhi (Amendment) Ordinance, 2023, promulgated by the President of India under Article 123 of the Constitution on May 19, 2023. The ordinance negates a Supreme Court judgment delivered on May 11, 2023, which brought "services" under the Government of National Capital Territory of Delhi (NCTD).

Two key issues are Involved :

- the scope of the Supreme Court's verdict
- the constitutionality of the ordinance.

The Supreme Court had ruled that the Legislative Assembly of the NCTD has competence over entries in List II and List III, except for expressly excluded entries of List II (entries 1, 2, 18). The Court interpreted that out of the 66 entries in List II, the executive power of the Government of NCTD covers 63 entries, with the Union of India restricted to the remaining three: public order, police, and land.

The Court also clarified that executive power over “services” (entry 41) can be exercised exclusively by the Government of the NCTD. However, this interpretation was negated by the Union of India by triggering the President’s extraordinary legislative power under Article 123 in the promulgation of the ordinance.

The ordinance read/inserted entry 41 of List II (State list) into Article 239AA(3)(a), expanding the scope of excepted matter from three (1, 2, 18) to four (1, 2, 18, 41). According to the article, this could not have been done without amending Article 239AA(3)(a) of the Constitution. It highlights that the power conferred on Parliament under Article 239AA(3)(b) is to make fresh laws, not to amend Article 239AA(3)(a) of the Constitution.

### **Constitutional Amendment Required**

The power conferred on Parliament under Article 239AA(7)(a) is to make laws for giving effect to or supplementing the provisions contained in various clauses of Article 239AA. However, such a power cannot be used to amend Article 239AA(3)(a) of the Constitution. Therefore, altering the scope of Article 239AA(3)(a) requires a constitutional amendment under Article 368.

As a result, the ordinance promulgated under Article 123 of the Constitution to expand the scope of excepted matters in Article 239AA(3)(a) is void ab initio and is liable to be struck down for bypassing constitutional amendment. It is considered a colourable exercise of power as Article 123 is no substitute for Article 368 (amendment of the Constitution) in Part XX.

### **Article -141 and 144 Not considered**

When a Constitution Bench of the Supreme Court declares/interprets the law, the same is binding on all courts and authorities in India as per Articles 141 and 144. It questions whether Articles 141 and 144 could have been negated by Article 123 without a constitutional amendment, concluding that a constitutional amendment is necessary to alter the basis of the Court judgment.

## **5. Election Commission Reform by Court - Legal Issues**

The "**Anoop Baranwal vs Union of India**" judgment of March 2, 2023, revises the selection process for the Chief Election Commissioner and the Election Commissioners in India. The Supreme Court ruled that a three-member committee, comprising the Prime Minister, the Leader of the Opposition (or the leader of the largest opposition party in Parliament), and the Chief Justice of India, will handle these selections. This change counters the current process in which the President, advised by the Prime Minister, appoints the Chief Election Commissioner.

This ruling is based on the interpretation of Article 324 of the Indian Constitution, which vests the “superintendence, direction, and control of elections” in the Election Commission. The Justices analyzed

the historical context of Article 324 and found that the framers intended to protect the Election Commission from executive interference. The increasing powers and roles of the Election Commission further underlined the necessity of its independence.

The justices concluded that the current constitutional structure does not sufficiently protect the independence of the Election Commission, creating a gap in the constitutional scheme. The Court steps in to fill this gap by amending the selection process until Parliament enacts a suitable law.

Justice Joseph's majority judgment outlined the legislative history of Article 324 and concluded that the appointment of Election Commission members should not be exclusively with the Executive. In addition, the court affirmed that any law enacted by Parliament concerning Article 324(2) must ensure the independence of the Election Commission from executive control.

This judgment highlights a flaw in the constitutional design, which might lead to accusations of judicial overreach. Yet, it also emphasizes the necessity of a structurally independent Election Commission. It is expected that any law Parliament might enact regarding this matter would be tested for its effectiveness in protecting the Election Commission's independence.

## 6. Case of the week: 'Rajnish v. Neha & Anr.'

The case of 'Rajnish v. Neha & Anr.' delivered on 4th November 2020, is a significant judgment from the Supreme Court of India pertaining to the issue of maintenance in matrimonial matters. This landmark ruling, delivered by a bench comprising Justices Indu Malhotra and R. Subhash Reddy, provided comprehensive guidelines for determining interim maintenance in matrimonial cases, aiming to ensure uniformity and consistency in the rulings of different courts across the country.

The case also led to a significant shift in the court's stance on the Family Welfare Committees (FWCs) as proposed in its earlier ruling in the '**Social Action Forum for Manav Adhikar and Another v. Union of India Ministry of Law and Justice and Others**' case. Here, the Supreme Court acknowledged the overstepping of judicial boundaries in the creation of FWCs, consequently rescinding its directive for their formation, thereby reinstating the legal authority of the police and judiciary in determining the legitimacy of complaints under Section 498A of the Indian Penal Code (IPC).

In terms of maintenance guidelines, the Supreme Court laid down important directives in the 'Rajnish v. Neha & Anr.' judgment:

1. For determining the quantum of maintenance, factors like the status of parties, reasonable needs of the wife and children, and the husband's liabilities would be considered.
2. A wife should be entitled to lead a life similar to what she would have enjoyed in her matrimonial home.
3. The financial capacity of the husband is not the sole consideration for determining maintenance. The wife's own earnings or assets might also factor in.

The judgment also introduced the concept of a 'Maintenance Application' form for consistency in data available to the courts, further easing the process of determining maintenance. This case is therefore crucial in standardizing maintenance procedures in India and protecting the rights and interests of parties involved in matrimonial disputes.

## 7. Repeated PYQ Model Answer of the Week

"The liability of a surety is coextensive with principal debtor, unless it is otherwise provided by the contract." Elucidate the statement by narrating the circumstances under which a surety is discharged from his liability.

The statement "The liability of a surety is coextensive with the principal debtor unless it is otherwise provided by the contract" reflects a principle of suretyship under the Indian Contract Act, 1872. It means that a surety is generally liable to the same extent as the principal debtor, unless the contract between the parties specifies otherwise.

However, there are circumstances under which a surety may be discharged from their liability in India. Let's explore these circumstances:

1. **Performance of Obligations (Section 133):** A surety's liability is discharged if they perform the obligations of the principal debtor.
2. **Expiration of Time (Section 133):** If the contract specifies a particular time period for the surety's liability, the surety is discharged once that time period expires, provided there is no breach of the contract.
3. **Variation of Terms (Section 133):** If the terms of the contract are altered without the consent of the surety, the surety may be discharged to the extent that the alteration prejudices their rights.
4. **Release by Agreement (Section 134):** The surety may be discharged if the creditor and the principal debtor agree to release the surety from their obligations.
5. **Discharge by Novation (Section 62):** If there is a new agreement between the creditor, the principal debtor, and the surety, where the old contract is replaced by a new one, the surety's liability may be discharged.
6. **Release by Principal Debtor (Section 134):** If the principal debtor is released from their liability by the creditor, the surety is also discharged to the same extent.
7. **Loss or Impairment of Security (Section 139):** If the creditor loses or impairs the security provided by the principal debtor without the surety's consent, the surety may be discharged to the extent of the loss or impairment suffered.
8. **Material Alteration (Section 133):** If there is a material alteration in the terms of the contract without the surety's consent, the surety may be discharged from their liability.

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