Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics
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1 . Supreme Court Recalls Clearance Ban..... 1
2. Interest rate in arbitral award not a public policy violation..... 2
3.Legislative Re-enactment Violates Constitution..... 2
4. Death Penalty Sentencing Can Be Reopened via Article 32..... 3
5. Federalism Bars Absolute Governor Veto..... 4
6. Consent and "False Promise of Marriage"..... 4
7. Trend Of Overturning Judgments By Succeeding Benches Painful : SC..... 5
8. ‘’Home Branch" Jurisdiction under Section 142(2)(a) NI Act..... 6
9. Supreme Court to Reviews Cash Donation to Political parties..... 6
10. Applicability of Section 18 Bar under SC/ST Act..... 7

Weekly Focus

Jus Cogens: The Peremptory Norms of International Law..... 7
PYQ Solution..... 9

1 . Supreme Court Recalls Clearance Ban

The recent 2:1 decision in *CREDAI v. Vanashakti*, where the Supreme Court recalled its own judgment barring ex-post facto Environmental Clearances (EC). This ruling is a fascinating study in the doctrine of **Per Incuriam** and the balance between administrative pragmatism and environmental jurisprudence.

The Question of Law: *Per Incuriam* and Precedent

The core legal dispute rests on whether the original *Vanashakti* bench ignored binding coordinate precedents.

- **The Majority View (CJI Gavai & J. Chandran):** They held that *Vanashakti* was *per incuriam* (characterized by lack of due regard to the law) because it failed to notice previous coordinate bench rulings like *D Swamy* and *Pahwa Plastics*. These earlier cases established that while post-facto EC is an exception, it is not an absolute anathema to the law.
- **The Dissent (J. Bhuyan):** In a sharp rebuke, Justice Bhuyan argued that cases like *D Swamy* were themselves *per incuriam* for deviating from the foundational *Alembic* and *Common Cause* judgments, which mandated prior EC.

Pragmatism vs. The Precautionary Principle

The judgment raises a critical question regarding the **Doctrine of Proportionality**. The Majority relied on the **General Clauses Act**, arguing that the power to regulate includes the power to relax regulations. They adopted a utilitarian approach: compelling the demolition of projects only to allow them to rebuild after obtaining EC is "counter-productive" to public interest and the exchequer.

Conversely, the Dissent adhered to strict environmental rule of law, warning that allowing post-facto ratification incentivizes illegality. This recall signals a judicial shift towards viewing environmental compliance as a procedural irregularity that can be cured, rather than a jurisdictional prerequisite.

2. Interest rate in arbitral award not a public policy violation

The Supreme Court Sri Lakshmi Hotel Pvt. Limited & Anr. v. Sriram City Union Finance Ltd. & Anr. upheld the charging of a 24% interest rate in an arbitral award, stating that an interest rate agreed upon in a commercial loan agreement did not violate the fundamental policy of Indian law.

“It is well-settled that fundamental policy of Indian law does not refer to violation of any Statue but fundamental principles on which Indian law is founded.

Any difference or controversy as to rate of interest clearly falls outside the scope of challenge on the ground of conflict with the public policy of India unless it is evident that the rate of interest awarded is so perverse and so unreasonable so as to shock the conscience of the Court sans which no interference is warranted in the award, whereby interest is awarded by the Arbitrator.”

observed a bench of Justices JB Pardiwala and KV Viswanathan pointing that the imposition of a high interest in the background of contemporary commercial practices wouldn't be per se against the fundamental policy of Indian Law, or against the basic notions of morality or justice as per clauses (ii) and (iii) of Explanation 1 to Section 34(2)(b) of the Arbitration and Conciliation Act, 1996.

The case arose from two loan agreements from 2006, under which the appellants borrowed a total of ₹1.57 crore from the respondent, a Non-Banking Financial Company (NBFC). The agreements stipulated an interest rate of 24% per annum. After the appellants defaulted on repayment, arbitration was initiated, resulting in an award in favour of the NBFC.

3.Legislative Re-enactment Violates Constitution

The Supreme Court’s recent decision ***(Madras Bar Association v. Union of India)*** to strike down the Tribunal Reforms Act, 2021, serves as a significant jurisprudential reinforcement of Constitutional Supremacy against legislative overreach. The central question of law addresses the limits of Parliament’s legislative competence when attempting to nullify a judicial pronouncement. As articulated by Chief Justice Gavai, the Legislature is barred from merely "re-packaging" or re-enacting provisions previously declared ultra vires—specifically those concerning tribunal appointments

and tenure settled in the Rojer Mathew and Madras Bar Association rulings—without curing the specific constitutional infirmities identified by the judiciary.

The judgment poignantly invokes Dr. B.R. Ambedkar's warning regarding the "form of administration" betraying the "spirit of the Constitution." The Court held that a simplistic re-enactment constitutes a direct encroachment on the judicial domain, thereby violating the **Separation of Powers**, a basic feature of the Constitution.

For a validating Act to be lawful, the legislature must substantively alter the fundamental basis on which the previous judgment was rendered; it cannot merely act as an appellate authority over the Supreme Court to override a verdict it finds inconvenient. Justice Vinod Chandran's concurrence, characterizing the Act as "old wine in a new bottle," emphasizes this lack of substantive legislative correction.

Furthermore, the ruling highlights a critical dimension of judicial economy and governance. By forcing the Court to readjudicate settled issues, the State exacerbates the crisis of pendency and wastes institutional resources.

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. Federalism Bars Absolute Governor Veto

The Supreme Court's recent opinion in the Presidential Reference settles a critical friction point in Indian Federalism: the scope of the Governor's discretion under **Article 200**. The Court has authoritatively ruled that a Governor cannot exercise a "pocket veto" by simply withholding assent indefinitely. The *ratio decidendi* rests on a structural reading of the Constitution, holding that the power to "withhold assent" is not a standalone "fourth option" but is intrinsically coupled with the proviso requiring the Bill's return to the Assembly.

From a jurisprudential standpoint, the Court utilized the **Doctrine of Absurdity**. It noted that if a Governor could simply "withhold" without returning, they could effectively kill Money Bills—which expressly cannot be returned—thereby paralyzing the state's finances. This would render the specific constitutional bar on returning Money Bills nugatory. The judgment asserts that once a Bill is returned and re-passed by the House, the Governor is constitutionally bound to assent, thereby cementing the supremacy of the elected legislature.

Crucially, the judgment redefines the Governor-Legislature relationship through the lens of **Constitutional Comity**. By insisting on a "dialogic process," the Court has rejected the notion of the Governor as a rival power center. Instead, the first proviso is interpreted as a mechanism for constructive exchange, not obstruction. This decision safeguards the federal principle, ensuring that the titular head cannot derail the democratic mandate of State Legislatures through inaction, preserving the delicate checks and balances envisioned by the framers

6. Consent and "False Promise of Marriage"

The Supreme Court's recent judgment in *Samadhan v. State of Maharashtra* serves as a critical corrective in criminal jurisprudence regarding **Section 376 of the IPC** (Rape). As legal scholars, we must dissect the Court's distinction between a "false promise of marriage" and a "breach of promise," a nuance that often determines the liberty of the accused.

The Question of Law: Vitiated Consent

The central legal issue revolves around **Section 90 of the IPC**, which states that consent given under a "misconception of fact" is not valid consent. The prosecution argued that the promise of marriage was the "fact" that induced the woman's consent.

However, the Bench clarified the high evidentiary threshold required to prove this. For a relationship to constitute rape under this pretext, the prosecution must prove that the accused had **no intention** of marrying the victim *from the very inception* of the relationship. This establishes the necessary *mens rea* (guilty mind) for deception.

Consensual Intimacy vs. Criminality

The Court applied the *ratio* from *Mahesh Damu Khare*, establishing a "Sole Inducement Test."

- **The Test:** Was the physical relationship motivated *solely* by the promise of marriage?
- **The Findings:** In this case, the relationship lasted three years, and the woman (who was already married) had previously opposed the accused's marriage proposal.

The Court held that long-term, emotionally involved relationships cannot be retrospectively branded as rape simply because they turned "sour." The judgment safeguards the legal process from being weaponized to settle personal scores, emphasizing that **Section 376** is for genuine sexual violence, not for penalizing heartbreak or matrimonial failures.

7. Trend Of Overturning Judgments By Succeeding Benches Painful : SC

The Supreme Court's recent pronouncement serves as a stern reprimand against the practice of "bench hunting"—a strategy where litigants wait for a change in the roster to seek a favorable order from a different bench. In rejecting the plea for modification of bail conditions, the Court reinforced the sanctity of **Article 141** and the **Doctrine of Finality**.

The Erosion of *Stare Decisis*

The core legal issue addressed is the stability of judicial precedents. The Bench, comprising Justices Datta and Masih, expressed pain at the trend of succeeding benches overturning earlier verdicts simply because they believe they possess a "better view."

In legal theory, **Stare Decisis** (to stand by things decided) ensures certainty. If coordinate benches (benches of equal strength) routinely unsettle the rulings of their predecessors without a change in law or facts, judicial outcomes become a lottery based on the composition of the bench rather than settled principles of law.

Forum Shopping vs. Material Change

The Court distinguished between a legitimate change in circumstances and an attempt to "game" the system. The petitioner sought to relax bail conditions imposed by a previous bench led by Justice Oka (since retired). The Court held that approaching a new bench to re-litigate settled conditions, absent any new material facts, amounts to an abuse of process.

This judgment clarifies that the "law of the land" cannot be fluid, changing with every retirement or roster shift. Institutional comity requires that judges respect the rulings of their colleagues to preserve public faith in the judiciary.

8. ‘’Home Branch" Jurisdiction under Section 142(2)(a) NI Act.

The Supreme Court's latest ruling in *Jai Balaji Industries Ltd. v. M/s HEG Ltd.* provides definitive clarity on **territorial jurisdiction** under the Negotiable Instruments Act, 1881, specifically correcting previous judicial misinterpretations.

The Question of Law: The Deeming Fiction

The core legal issue concerns the interpretation of **Section 142(2)(a)**, introduced by the 2015 Amendment. The question was whether a complaint can be filed at *any* branch where a cheque is deposited, or solely at the "home branch" where the payee maintains the account.

The Court applied the **Rule of Literal Construction** combined with the **mischief rule**. It held that the Explanation to Section 142(2)(a) creates a **statutory deeming fiction**. Even if a payee deposits a cheque at a remote branch for convenience, the law "deems" it delivered to the branch where the account is formally maintained.

Overruling *Per Incuriam* Precedent

Significantly, the Bench declared the 2023 ruling in *Yogesh Upadhyay* as *per incuriam*. That judgment had erroneously allowed jurisdiction at any depositing branch, inadvertently facilitating **forum shopping**—a practice where litigants choose courts most inconvenient to the accused to apply pressure.

By distinguishing between "Delivery" (handing the cheque to the bank) and "Presentment" (the bank demanding payment), the Court affirmed that for account payee cheques, jurisdiction is anchored strictly to the **Payee's Home Branch**. This aligns legal interpretation with the legislative intent of the 2015 Amendment: to centralize jurisdiction and prevent harassment of the accused through remote litigation.

9. Supreme Court to Reviews Cash Donation to Political parties

The Supreme Court’s recent issuance of notice in *Khem Singh Bhati v. Election Commission of India* brings a critical "Question of Law" to the forefront: Does the statutory permission for political parties to accept cash donations up to ₹2,000 violate the voter's Fundamental Right to Information?

Statute vs. Constitution The petition challenges **Section 13A(d) of the Income Tax Act, 1961**. Currently, this provision acts as a safe harbor, exempting political parties from maintaining records of contributors who donate less than ₹2,000 in cash. The petitioner argues this is a legislative loophole facilitating "smurfing"—breaking large illicit amounts into small, anonymous cash tranches to evade scrutiny.

***ADR v. Union of India* (2024)**: must be viewed this through the lens of the landmark *Electoral Bonds Judgment*. In that ruling, the Constitution Bench established that

transparency in political funding is non-negotiable under Article 19(1)(a). The Court rejected the argument that donor privacy outweighs the public interest in knowing who funds political parties.

The 'Digital India' Argument The petition introduces a novel evidentiary ground: the ubiquity of **UPI and digital payments**. If the poorest citizens can transact digitally, the "administrative convenience" defense for maintaining a cash threshold collapses. The Court must now decide if this statutory exemption is "manifestly arbitrary" and devoid of a rational nexus to its object, thereby failing the test of constitutionality.

10. Applicability of Section 18 Bar under SC/ST Act

The Supreme Court's interim order in *Vijay Kumar Sistla v. State of Tamil Nadu* sharpens the rigorous provisions of the **SC/ST (Prevention of Atrocities) Act, 1989** and the protection of personal liberty against malicious prosecution. The central Question of Law addresses whether the statutory bar on anticipatory bail under **Section 18** of the Act applies when allegations of caste-discrimination stem from bonafide administrative decisions, such as the denial of maternity leave.

The Madras High Court had denied pre-arrest bail, strictly adhering to Section 18, which explicitly excludes the application of **Section 438 of the CrPC**. However, the Supreme Court's intervention highlights a critical judicial exception established in *Shajan Skaria v. State of Kerala*. The Court reiterated that the bar under Section 18 is not absolute. If a complaint is found to be "palpably false" or actuated by "private vendetta," the Court is not rendered powerless; it retains the jurisdiction to conduct a preliminary inquiry to ascertain if a *prima facie* case constitutes an offence under the Act.

In this instance, the petitioner argues that the denial of Child Care Leave was a jurisdictional limitation of his office, not an act of caste-based animus. The defense relies on a prior exoneration by an internal Fact-Finding Committee to demonstrate *mala fides* on the part of the complainant. This case serves as a vital precedent distinguishing **Service Jurisprudence** from **Criminal Liability**. It reinforces the principle that special statutes cannot be weaponized to settle employment grievances. As legal scholars, we observe the Court signaling that administrative actions, devoid of specific discriminatory intent, should not automatically trigger the draconian provisions of the Atrocities Act.

Weekly Focus

Jus Cogens: The Peremptory Norms of International Law

Jus cogens (Latin for "compelling law") represents the highest hierarchy in the international legal order. It refers to peremptory norms that are so fundamental to the international community that no State can opt out of them.

While most international law is **dispositive** (*jus dispositivum*)—meaning States can agree to change the rules between themselves via treaty—*jus cogens* is the exception. It operates as a constitutional constraint on State sovereignty: two States cannot sign a treaty to commit genocide or legitimize slavery; such a treaty would be *void ab initio* (invalid from the start).

1. Legal Definition and Source

The primary statutory definition is found in **Article 53 of the Vienna Convention on the Law of Treaties (VCLT), 1969**:

> *"A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law... a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted..."*

2. Theoretical Foundations

To understand *jus cogens* is to understand the tension between two major legal theories:

- **Natural Law:** The historical root of *jus cogens*. It suggests certain laws (morality, human dignity) are inherent to human existence and superior to any government's will.
- **Legal Positivism:** The modern view that law is whatever States consent to. *Jus cogens* is a challenge to strict positivism because it binds a State **even if that State objects**.

3. Core Characteristics

- **Non-Derogability:** No exception is allowed, not even during war or national emergency.
- **Universality:** It applies to every entity in the international system (States, International Organizations, rebel groups).
- **Hierarchical Superiority:** It overrides all other sources of law, including UN Security Council resolutions or bilateral treaties.
- **Mutating Power:** Under **Article 64 of the VCLT**, if a *new* peremptory norm emerges, any existing treaty in conflict with it becomes void and terminates.

4. The "List": What counts as *Jus Cogens*?

There is no codified "master list," which often leads to disputes. However, in **2022**, the **International Law Commission (ILC)** adopted Draft Conclusions that provide the most authoritative non-exhaustive list to date:

- The prohibition of aggression (illegal use of force).
- The prohibition of genocide.
- The prohibition of crimes against humanity.
- The basic rules of international humanitarian law (laws of war).

- The prohibition of racial discrimination and apartheid.
- The prohibition of slavery.
- The prohibition of torture.
- The right of self-determination.

5. *Jus Cogens* vs. *Erga Omnes*

These terms are often confused. As a legal scholar, you must distinguish them:

- **Jus Cogens** refers to the **status** of the norm (it is superior and cannot be violated).
- **Erga Omnes** (Latin for "towards all") refers to the **scope** of the procedural obligation.

The Nexus: Because a norm is *jus cogens* (e.g., prohibition of genocide), the obligation to prevent it is owed *erga omnes*. This means **any State** can complain about a violation, not just the victim State (See: *Barcelona Traction case, ICJ*).

6. Enforcement and Sovereign Immunity

This is the most complex area of current litigation. While *jus cogens* norms are substantive, they often clash with procedural rules like **State Immunity**.

- **The Conflict:** Can a victim of torture (a *jus cogens* violation) sue a foreign government in domestic court?
- **The Ruling:** In *Jurisdictional Immunities of the State (Germany v. Italy, 2012)*, the International Court of Justice (ICJ) held that **procedural immunity prevails**. Even if a State commits a heinous *jus cogens* crime, it generally cannot be sued in the courts of another State without its consent. This remains a controversial point where law and morality often diverge.

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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