

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

1st Oct - 15th Oct 2025

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1. Judicial Scrutiny of Irrational Tender Restrictions

In *Vinishma Technologies Pvt. Ltd. v. State of Chhattisgarh & Anr.*, the Supreme Court struck down a tender condition requiring prior supply experience within Chhattisgarh as violative of Articles 14 and 19(1)(g) of the Constitution. The Court, per Justice Alok Aradhe, reaffirmed that the State's discretion in formulating tender conditions is not unfettered and must adhere to constitutional principles of fairness, reasonableness, and non-arbitrariness.

The impugned condition—mandating past supply of ₹6 crores worth of sports kits specifically to Chhattisgarh government agencies—was found to be an *artificial barrier* excluding competent national suppliers. The Court emphasized that the “doctrine of level playing field” forms an essential component of equality under Article 14, requiring that all eligible participants be given an equal opportunity to compete. Any restriction that skews competition in favor of a local cartel undermines this constitutional guarantee and imposes an unreasonable restraint on the fundamental right to trade and business under Article 19(1)(g).

The Bench rejected the State's justification that local experience was essential due to Maoist-affected regions, holding it to be a tenuous and disproportionate rationale, especially when the tender involved routine supplies rather than security-sensitive materials. The judgment clarifies that eligibility criteria must bear a rational nexus to the object of procurement—quality, efficiency, and economy—not to parochial geographic considerations.

2. Trustee's Personal Liability Under Section 138 NI Act

In *Sankar Padam Thapa v. Vijaykumar Dineshchandra Agarwal*, the Supreme Court clarified a significant point of law under Section 138 of the Negotiable Instruments Act, 1881, holding that a cheque dishonour

complaint is maintainable against a trustee who personally signs a cheque on behalf of a trust, even without arraying the trust itself as an accused.

The Bench comprising Justices Ahsanuddin Amanullah and Prashant Kumar Mishra reasoned that a trust, unlike a company or partnership firm, is not a juristic person and cannot be prosecuted as an independent legal entity.

Consequently, the trustees—especially those managing the day-to-day affairs and signing instruments—bear personal responsibility for acts done in the trust's name. The Court emphasized that the signatory trustee, by issuing the cheque, attracts direct criminal liability if the cheque is dishonoured, as the act constitutes personal execution rather than mere representation.

Referring to ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla (2005)*** and ***K.K. Ahuja v. V.K. Vora (2009)***, the Court reiterated that liability under Section 138 extends to individuals who are in charge of and responsible for the conduct of business at the relevant time. It rejected the High Court's view that absence of the trust as an accused rendered the complaint defective, noting that such reasoning overlooks the non-juristic status of trusts under Indian law.

Accordingly, the Court restored the complaint, reaffirming that trustees cannot evade penal consequences by sheltering behind the trust's non-personhood.

3. Arbitration Right Survives Despite Inoperable Clause

In *Offshore Infrastructures Ltd. v. Bharat Petroleum Corporation Ltd.*, the Supreme Court reaffirmed the vitality of party autonomy and the legislative intent behind Section 12(5) of the Arbitration and Conciliation Act, 1996, holding that the right to seek arbitration does not perish merely because the named arbitrator in the clause has become ineligible by law.

The Bench of Justice Dipankar Datta and Justice A.G. Masih clarified that the ineligibility of a designated arbitrator—here, the Managing Director of the respondent company—under Section 12(5) read with the Seventh Schedule, does not nullify the arbitration agreement itself. Instead, the inoperable part of the clause is severable, and the Court under Section 11(6) retains the power to appoint an independent, neutral arbitrator to uphold the efficacy of the arbitral process.

Rejecting the High Court's contrary view, the Court held that statutory amendments ensuring neutrality cannot be construed to extinguish the parties' consensual mechanism for dispute resolution. The Court emphasized a *purposive interpretation* of arbitration clauses—protecting the core intent to arbitrate while harmonizing it with the statutory command of impartiality.

Relying on *TRF Ltd. v. Energo Engineering Projects Ltd.* and *Perkins Eastman Architects v. HSCC (India) Ltd.*, the Court reiterated that once the named arbitrator becomes ineligible, the authority to appoint transfers to the court. Additionally, following *Geo Miller & Co. Pvt. Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.*, it reaffirmed that limitation under Section 11(6) begins when the final bill is due, excluding periods covered by COVID-19 extensions.

4. Tests to Identify Common Object Under Section 149 IPC

In *Zainul v. State of Bihar*, the Supreme Court provided authoritative guidance on determining whether an individual present at a crime scene can be held liable under Section 149 of the Indian Penal Code. The Bench of Justice J.B. Pardiwala and Justice R. Mahadevan reaffirmed that mere presence during an offence does not automatically make one a member of an unlawful assembly. Liability arises only when the prosecution establishes that the accused shared the *common object* of that assembly.

The Court clarified that to invoke Section 149, the prosecution must prove—through clear and cogent evidence—that the accused participated in or actively supported the collective object, rather than being a passive onlooker. In assessing this, the Court outlined several factors: the time and place of formation of the assembly, conduct of members, nature of weapons used, motive, manner of attack, and extent of injuries inflicted. These tests serve as indicators of shared intent and participation.

Relying on the seminal precedent in *Masalti v. State of Uttar Pradesh* (1964), the judgment cautioned that in cases involving large mobs, courts must exercise “utmost care” and avoid convictions based on vague or omnibus allegations. Conviction is safe only where at least two or three credible witnesses consistently identify an accused as having acted in furtherance of the unlawful object.

Finding the evidence against the appellants imprecise and failing to demonstrate shared intent, the Court acquitted them, reiterating the principle that criminal liability under Section 149 demands clear proof of common purpose—not mere presence or association.

5. Revival of Alienation of Affection Tort Raises Constitutional Concerns

In a recent development, the **Delhi High Court’s recognition of the tort of Alienation of Affection (AoA)** has sparked significant constitutional and jurisprudential debate. The decision permits a spouse to claim damages from their partner’s lover for alleged interference in the marital relationship and the consequent loss of affection and companionship. Legal scholars have criticised this move as **an attempt to reintroduce moral policing through civil law**, contrary to the liberal spirit of the Indian Constitution.

The **tort of Alienation of Affection** originated in *Winsmore v. Greenbank* (1745), where the English courts allowed a husband to recover damages for the “loss of consortium” of his wife. Rooted in patriarchal and religious notions of marriage as a proprietary institution, the tort was **abolished in England by the Law Reform (Miscellaneous Provisions) Act, 1970**, and survives today only in a few American jurisdictions.

Experts argue that **the revival of this tort in India is inconsistent with the Supreme Court’s landmark ruling in *Joseph Shine v. Union of India* (2018)**, which decriminalised adultery and upheld the principles of privacy, autonomy, and gender equality. According to legal commentators, **treating adultery as a civil wrong rather than a crime does not alter its unconstitutional nature**, as both rest on the same moral premise that the state must preserve the sanctity of marriage.

Critics further note that the **assumption of causation between a third party’s involvement and marital breakdown is speculative** and lacks evidentiary objectivity. They contend that such reasoning unjustly shifts personal and emotional complexities into the realm of legal liability.

6. Criminal Defamation and the Fight for Free Speech

The ongoing **criminal defamation case against *The Wire*** has reignited the national debate on whether India should continue to punish defamation with imprisonment — a colonial legacy that persists even in the world's largest democracy.

The case, *Foundation for Independent Journalism Pvt. Ltd. & Anr. v. Amita Singh*, stems from a 2016 complaint by a JNU professor who alleged that an article published by *The Wire* damaged her professional reputation. The matter, now before the **Supreme Court bench of Justices M.M. Sundresh and Satish Chandra Sharma**, is poised to become a **constitutional test of free speech versus reputation**.

The accused argue that **criminal defamation is incompatible with democratic values**, describing it as a “colonial relic” used historically to silence dissenters. Despite the **repeal of the Indian Penal Code (IPC) of 1860**, the provision survives in almost identical form under **Section 356 of the Bhartiya Nyaya Sanhita (BNS), 2023**, undermining the government's stated aim of “decolonising” criminal law. While the BNS introduces community service as an alternative punishment for minor offences, **its ambiguity and limited scope render it ineffective** as a safeguard for journalists and activists.

Legal experts emphasize that **civil remedies — compensation, apologies, and tort damages — offer proportionate alternatives** to criminal prosecution. However, criminal defamation continues to be wielded as **a tool of harassment by the powerful**, stifling investigative journalism and political criticism.

Globally, **India stands isolated**. The UK abolished criminal defamation in 2009, the US treats it solely as a civil wrong, and countries like Sri Lanka and Ghana have repealed similar colonial-era provisions. Under **Article 19(1)(a)** of the Indian Constitution, freedom of speech is a fundamental right, and any restriction must satisfy the test of reasonableness under **Article 19(2)**.

7. Witness Voice Samples doesn't Violate A. 20(3)

In *Rahul Agarwal v. State of West Bengal & Anr.*, the Supreme Court clarified that **magistrates have the authority to direct not only accused persons but also witnesses to provide voice samples** for investigative purposes. The Bench of Chief Justice B.R. Gavai and Justice K. Vinod Chandran reaffirmed that such samples—whether voice, fingerprints, handwriting, or DNA—constitute **material evidence** rather than testimonial evidence, and therefore do **not violate Article 20(3)** of the Constitution, which protects against self-incrimination.

The Court relied on *Ritesh Sinha v. State of Uttar Pradesh* (2019), emphasizing that a “person” under judicial powers is **not confined to the accused** but includes witnesses, as the rule against self-incrimination applies to both. The judgment clarified that collecting physical or biological samples is **distinct from compelling testimonial communication**, and any comparison with investigative materials may incriminate, but the act of providing the sample itself does not.

The case arose from a 2021 investigation into the death of a young woman, where police sought a voice sample from a key witness to compare with recorded conversations. The Calcutta High Court had quashed the magistrate's order, citing pending larger bench deliberations, but the Supreme Court set aside that decision, holding that **existing Supreme Court precedents empower magistrates to collect voice samples from witnesses** until procedural law explicitly incorporates the provision.

The Court further noted that **Section 349 of the Bhartiya Nyaya Sanhita (BNSS)** expressly allows magistrates to direct such sampling, reinforcing the material evidence principle. Citing *State of Bombay v. Kathi Kalu Oghad*, the Court reiterated that **providing a sample does not amount to testimonial compulsion** and therefore does not trigger Article 20(3) protections.

8. SC Challenge Against CCI Investigation

In *Asian Paints Ltd. v. Competition Commission of India*, Asian Paints has approached the **Supreme Court** challenging the Bombay High Court's decision upholding a **CCI investigation** into alleged abuse of dominance in the decorative paints market. The probe originated from a complaint filed by **Grasim Industries** of the Aditya Birla Group on July 1, 2025.

The Bombay High Court, in a **Division Bench of Justices Revati Mohite Dere and Dr. Neela Gokhale**, dismissed Asian Paints' writ petition, holding that **a party has no inherent right to an oral or written hearing at the stage when CCI forms a prima facie opinion under Section 26(1) of the Competition Act, 2002**. The Court clarified that such an order is administrative in nature, and it is **within the CCI's discretion to decide whether to grant a hearing**.

Asian Paints also argued that Grasim's complaint was barred under **Section 26(2-A)**, citing a 2022 complaint dismissed by CCI involving JSW Paints and Balaji Traders. The Court rejected this contention, emphasizing that **Section 26(2-A) only prevents repetition of previously examined facts and does not impose a jurisdictional bar on new complaints presenting fresh facts or material**. The Court noted that Grasim's complaint contained distinct factual material, justifying investigation.

The Court further held that **principles of natural justice were not violated**, as no statutory or inherent right exists for a hearing at the prima facie stage. Whether to conduct a hearing depends on CCI's discretion based on circumstances of the case.

Consequently, the Bombay High Court upheld CCI's authority to investigate Asian Paints, allowing the probe to continue. The matter now proceeds before the **Supreme Court**, where Asian Paints seeks relief from the ongoing investigation, challenging both the process and the scope of CCI's discretion.

Weekly Focus

Case of the week: Dr. N.B. Khare v. The State of Delhi (1950)

One of the earliest and significant judgments interpreting Article 19(1)(e) is the case of **Dr. N.B. Khare v. The State of Delhi (1950)**. In this case, the petitioner challenged an order under the East Punjab Public Safety Act, 1949, which directed him to reside outside Delhi for three months.

Key Points:

- **Challenge:** The petitioner contended that the order violated his fundamental right to reside and settle in any part of India under Article 19(1)(e).
- **Decision:** The Supreme Court upheld the order, emphasizing that the State could impose reasonable restrictions on this right in the interest of public safety.

- **Principle Established:** The judgment affirmed that while Article 19(1)(e) guarantees the right to reside and settle anywhere in India, this right is not absolute and can be restricted by the State for reasons such as public order and safety.

Subsequent Developments

Over the years, the judiciary has continued to uphold the balance between individual rights and public interests concerning Article 19(1)(e). For instance, in **U.P. Avas Evam Vikas Parishad v. Friends Co-op. Housing Society Ltd. (1995)**, the Supreme Court held that the right to residence includes the right to shelter and to construct houses for that purpose.

These cases collectively underscore the constitutional principle that while citizens have the right to reside and settle anywhere in India, this right is subject to reasonable restrictions imposed by the State in the interest of public welfare and safety.

PYQ Solution

"Notwithstanding transparency of governance, certain information have been exempted from disclosure under the Right to Information Act, 2006." Discuss the relevant provisions and limitations on disclosure of information (10 MARKS)

The Right to Information Act, 2005 (RTI Act) was enacted to promote transparency and accountability in the functioning of public authorities in India. However, recognizing the need to balance openness with other critical concerns, the Act delineates specific exemptions where information may be withheld from disclosure.

Key Exemptions Under Section 8(1):

1. **National Security and Sovereignty:** Information that could compromise India's sovereignty, integrity, security, strategic interests, or international relations is exempted.
2. **Parliamentary Privilege:** Disclosure of information prohibited by courts or that may constitute a breach of parliamentary privilege is exempted.
3. **Commercial Confidence:** Information including trade secrets or intellectual property, which could harm the competitive position of a third party, is protected unless the larger public interest warrants disclosure.
4. **Fiduciary Relationships:** Information available to a person in their fiduciary relationship is exempted, unless the larger public interest warrants disclosure.
5. **Personal Privacy:** Disclosure of personal information that has no relationship to public activity or interest, or which would cause an unwarranted invasion of privacy, is exempted unless the larger public interest justifies it.

Additional Provisions:

- **Section 9:** Information whose disclosure would involve an infringement of copyright is exempted.
- **Section 24:** Certain intelligence and security organizations are excluded from the RTI Act's purview, except in cases of alleged human rights violations or corruption.

Limitations on Exemptions: Despite these exemptions, the Act incorporates safeguards to prevent misuse:

- **Public Interest Override:** If the public interest in disclosure outweighs the harm to the protected interests, information may be disclosed.
- **Time-bound Exemptions:** Exemptions under Section 8(1) do not apply if the information pertains to events that occurred 20 years before the request, subject to certain conditions.

These provisions aim to strike a balance between the need for transparency and the protection of sensitive information, ensuring that the RTI Act serves its purpose without compromising other vital interests.

