Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

1st July - 20th July 2025

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1.Presidential Reference under Article 143 and Supreme Court Judgments

The invocation of **Article 143(1)** of the Indian Constitution raises critical questions about the **scope of the Supreme Court's advisory jurisdiction** and its **relationship with binding judicial decisions**.

Article 143 allows the **President to refer legal or factual questions of public importance** to the Supreme Court. However, the **Court is not obligated to answer** such References and can decline them, especially when the issues are already settled (e.g., *Ayodhya Reference*, *Cauvery Reference*).

A key legal issue is whether a Presidential Reference can be used to **revisit or modify a settled Supreme Court judgment**. The **Cauvery Reference (1998)** clarified that Article 143 **cannot be used as an appellate mechanism** over prior decisions. Further, when a legal issue has been authoritatively settled, it **ceases to be res integra**, and hence is **not referable** under Article 143.

However, in the **2G Spectrum Reference (2012)**, the Court held that it can **clarify, explain, or modify** previous judgments in its advisory capacity, so long as the **core decision between the parties remains unaffected**.

Crucially, **opinions under Article 143 are advisory and not binding** (as held in *St. Xavier's College Case*), though they carry persuasive value. Yet, Justice Y.V. Chandrachud's view in *Special Courts Bill (1978)* suggests that such opinions should have binding authority when rendered after full hearing.

The **latest Presidential Reference** post-*TN Governor case* raises concerns of **executive overreach** and **judicial independence**, possibly amounting to a **disguised review** of the judgment, which is otherwise only permissible under **Article 137**.

2. Optional Arbitration Clauses Do Not Constitute Binding Arbitration Agreements

In *BGM AND M-RPL-JMCT (JV) vs. Eastern Coalfields Ltd.*, the Supreme Court reaffirmed that an **arbitration clause using permissive language** such as "may be sought" does not constitute a **binding arbitration agreement** under **Section 7** of the *Arbitration and Conciliation Act, 1996*.

The Court upheld the High Court's refusal to refer the matter to arbitration under **Section 11**, stating that the clause merely offered an *optional mechanism* and did not reflect a clear intention to arbitrate disputes. Citing *Jagdish Chander v. Ramesh Chander (2007)* and *Mahanadi Coalfields v. IVRCL (2022)*, the Court reiterated that mere reference to arbitration or an arbitrator is insufficient unless accompanied by a **mandatory obligation to arbitrate**.

Importantly, the Court clarified that a **referral court's plain reading of the contract** to ascertain the existence of an arbitration agreement does not constitute a prohibited "mini-trial" under **Section 11(6-A)**. Relying on the principles from *In Re: Interplay Between Arbitration Agreements & Stamp Act (2023)*, the Court observed that the scope of judicial examination under Section 11 is **limited to a prima facie check** for the **existence** (not validity) of an arbitration agreement.

The judgment holds that courts can **weed out frivolous arbitration claims** at the threshold by examining the **language of the clause**. Here, the use of "may" rendered Clause 13 merely enabling, not binding. Therefore, the Court held that **mandatory intent to arbitrate** is essential for a valid arbitration agreement, and dismissed the appeal.

3. SARFAESI Act and Writ Jurisdiction of High Court

In *LIC Housing Finance Ltd v. Nagson and Company & Ors.* [(SLP (Civil) Diary No. 7979/2025)], the Supreme Court strongly criticized the Karnataka High Court for **restraining SARFAESI proceedings without recording reasons**, thereby **undermining the statutory framework and judicial discipline**.

The bench of Justices Dipankar Datta and Augustine George Masih reiterated that **writ jurisdiction under Article 226 must be exercised sparingly** in SARFAESI-related matters, emphasizing the **self-contained nature of the SARFAESI Act**, especially **Section 13**, and the presence of an alternative remedy under **Section 17 before the DRT**.

The Court referred to the binding precedent in *United Bank of India v. Satyawati Tondon & Ors.* (2010), which had already cautioned against indiscriminate interference by High Courts. Despite this, some High Courts continue to grant interim stays "on the mere asking," without satisfying the statutory or constitutional threshold.

In the instant case, the High Court, via interim orders dated 29.09.2021 and 23.09.2022, **restrained LIC Housing Finance from acting under Section 13**, even though the borrower owed over ₹72 crore. The interim relief was granted **without cogent reasons**, and the matter remained pending for over 30 months.

The Supreme Court held that **unreasoned interim orders** in such financial matters **erode institutional credibility** and **delay enforcement of security interests**, contrary to legislative intent. The Court directed the High Court to decide the writ petition by **September 2025** and issued notice on the SLP and delay condonation application.

4. General Assembly Endorses UN80 Resolution for member led reforms

On **18 July 2025**, the **UN General Assembly** adopted by consensus a resolution endorsing the **UN80 Initiative**, a reform framework introduced by the Secretary-General to modernize and streamline the United Nations system ahead of its 80th anniversary.

The resolution, introduced by **Russia** and adopted without a vote, affirms the **central role of Member States** in guiding the reform process, stressing that the initiative must be **inclusive, transparent**, and rooted in **evidence-based objectives**. It directs UN bodies and specialized agencies to **align their reform strategies** to ensure efficiency, agility, and mandate coherence across the UN's **three core pillars: peace and security, development, and human rights**.

While broadly welcoming the reform initiative, **several delegations—such as the EU, CANZ (Canada, Australia, New Zealand), and Switzerland with partners—criticized the resolution's timing**, calling it **premature** due to limited consultation periods. These states cautioned against curbing the initiative's **scope and ambition** through early procedural moves.

Japan supported the urgency of revitalizing multilateralism, while **Russia defended the process**, asserting that proper consultations, including the **silence procedure**, were followed. It emphasized the initiative's aim to **empower Member States** within the reform process while preserving the **Secretary-General's administrative prerogatives** under the UN Charter.

The **UN80 Initiative** focuses on:

1. **Operational efficiency**,
2. **Mandate delivery assessment**, and
3. **Systemic structural reforms**.

This resolution marks a **crucial procedural and political endorsement**, but its success hinges on **broad-based consensus, defined objectives**, and **sustained engagement** from all UN stakeholders.

5. Cheque Dishonour Complaint Maintainable Against Partners Without Naming Firm

In *Dhanasingh Prabhu v. Chandrasekar & Another* (decided on 16 July 2025), the Supreme Court clarified that a **complaint under Section 138 of the Negotiable Instruments Act, 1881** is **maintainable against individual partners of a partnership firm**, even if the **firm itself is not arrayed as an accused**.

The dispute arose when a cheque issued in the name of a partnership firm was dishonoured, and the **statutory notice under Section 138 was served only on the partners**, not the firm. The Madras High Court quashed the proceedings, holding that **non-arraignment of the firm rendered the complaint defective**.

The Supreme Court, setting aside the High Court's order, held that under **partnership law**, **partners are personally, jointly, and severally liable** for acts done in the firm's name. The firm, being **not a distinct legal entity**, functions **through its partners**; hence, the complaint can proceed against the partners alone.

The Court distinguished *Aneeta Hada v. Godfather Travels & Tours (P) Ltd.* (2012), which mandated that a company must be arraigned before prosecuting directors under Section 141 NI Act. The Court clarified that **directors of a company have only vicarious liability**, whereas **partners have direct liability** under partnership principles.

It held that even if the **firm was not served a notice or named as an accused**, the complaint remains valid against the partners, who are effectively the alter ego of the firm.

6. Rehabilitation Not Required in Land Acquisition Unless Livelihood/Residence Is Affected

In *Estate Officer, Haryana Urban Development Authority & Ors. v. Nirmala Devi* (17 July 2025), the Supreme Court held that **rehabilitation is not a mandatory component** in all land acquisition cases, except where **acquisition results in loss of residence or livelihood**, particularly for land-dependent individuals.

The bench of Justices JB Pardiwala and R Mahadevan emphasized that **monetary compensation is the primary entitlement** under land acquisition law. Rehabilitation beyond this is optional and may be provided **only on humanitarian grounds**, guided by fairness and equity, not as a legal mandate.

The Court clarified that **State-sponsored rehabilitation schemes**, such as Haryana's 1992 Policy, may create **unnecessary litigation** if not carefully implemented. In this case, while the respondents were eligible under the 1992 Policy, their **procedural lapses** barred relief. The Supreme Court set aside the High Court's order granting rehabilitation, highlighting that **procedural compliance is essential** to claim such policy-based benefits.

The judgment underscores that **rehabilitation is legally required only in exceptional cases**, such as for those rendered destitute, not all landowners affected by acquisition. However, under the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**, rehabilitation is codified alongside compensation, but the case here concerned a pre-2013 scenario.

Weekly Focus

Case of the Week: *West Rand Central Gold Mining Co. v. The King* [1905] 2 KB 391

In *West Rand Central Gold Mining Co. v. The King*, the King's Bench Division dealt with a claim by a British mining company seeking compensation from the British Crown for gold seized by the former South African (Transvaal) government before the Second Boer War. The British government had annexed the Transvaal, and the company argued that the Crown, as a successor state, inherited its obligations.

Key Issue: Was the British Crown legally bound to fulfill the obligations of the previous sovereign (Transvaal Republic) under international law upon annexation?

Court's Ruling: The Court dismissed the claim, holding that the British Crown was **not automatically bound** to assume the liabilities of the conquered state unless there existed **a legal obligation under international law**—specifically, one that was **generally accepted as binding law by the community of states**.

Legal Analysis: This case is widely regarded as a **foundational authority on the role of customary international law** in municipal legal systems. It emphasized two critical components of **customary international law (CIL)**:

1. **State Practice:** The Court noted the absence of consistent international practice requiring successor states to assume financial liabilities of their predecessors. For a rule to attain the status of customary international law, it must be **widespread, representative, and consistent** among states.
2. **Opinio Juris:** Crucially, the Court implied that even widespread practice is **not sufficient** unless accompanied by **opinio juris**—the belief that such practice is **carried out of a sense of legal obligation**, not merely courtesy or convenience. Without this belief, the practice cannot crystallize into binding law.

Therefore, the decision reinforced that **customary international law derives its binding force not from mere repetition, but from normative conviction (opinio juris)**. The British Crown was not obligated under international law to honor the debts of the Transvaal Republic because there was **no established practice or legal conviction** supporting such a duty at the time.

PYQ Solution

1. Is 'Secularism' an essential feature of the Constitution of India? Explain in the light of decided case laws. (10 MARKS)

Secularism is a fundamental aspect of the Indian Constitution, reflecting the country's commitment to religious neutrality and equal treatment of all religions. The Indian concept of secularism is distinct from the Western notion, as it does not advocate a complete separation of religion and state.

Instead, it emphasises the state's duty to treat all religions with equal respect and to ensure that no religion is given preferential treatment.

Constitutional Provisions

Preamble: The Preamble of the Constitution, as amended by the 42nd Amendment Act, 1976, explicitly declares India to be a "secular" republic.

Articles 25-28: These articles guarantee the right to freedom of religion, allowing every individual the freedom to profess, practice, and propagate their religion, subject to public order, morality, and health. The state is also prohibited from providing religious instruction in state-funded educational institutions.

Article 15: Prohibits discrimination on grounds of religion, among other things, reinforcing the secular nature of the state.

Article 44: The Directive Principle of State Policy enshrined in Article 44 encourages the state to secure a Uniform Civil Code for all citizens, which would further strengthen the secular character

Interpretation of Secularism

S.R. Bommai v. Union of India (1994)

In this landmark judgement, the Supreme Court held that secularism is a basic structure of the Indian Constitution. The Court clarified that any state government acting against the principle of secularism could be dismissed under Article 356.

Kesavananda Bharati v. State of Kerala (1973)

Though this case primarily dealt with the basic structure doctrine, it implicitly acknowledged that secularism was an inherent part of the Indian Constitution's basic structure.

St. Xavier's College v. State of Gujarat (1974)

The Court recognized the autonomy of religious educational institutions but also asserted that such institutions must uphold the secular character of the nation as embodied in the Constitution.

Aruna Roy v. Union of India (2002)

In *Aruna Roy v. Union of India* (2002), the Supreme Court dealt with the challenge to the inclusion of religious education in the curriculum of government schools. The petitioners argued that such inclusion violated the secular nature of the Constitution. However, the Court upheld the curriculum, stating that teaching about religions is different from imparting religious instruction.

Secularism is undeniably an essential feature of the Constitution of India. The principle is deeply embedded in the constitutional framework, as reflected in various provisions and reinforced through judicial interpretation.

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