Weekly Update for Law Optional UPSC

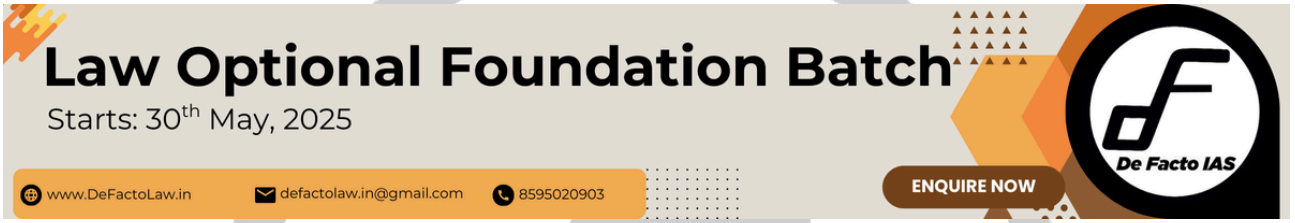
A mix of Conceptual, Current/Contemporary Topics

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1. High Court Can Exercise A. 227 for Interim Relief in Arbitration.

In a ruling dated May 7, 2025, the Supreme Court in *M/s Jindal Steel and Power Ltd. & Anr. v. M/s Bansal Infra Projects Pvt. Ltd. & Ors.* clarified that High Courts may exercise their supervisory jurisdiction under Article 227 of the Constitution to grant interim relief in arbitration matters in *exceptional cases*, despite the non-obstante provision under Section 5 of the Arbitration and Conciliation Act, 1996, which limits judicial interference.

The matter arose from a dispute where the Appellant had furnished an unconditional bank guarantee (BG) for ₹3.73 crore, which it later sought to encash after terminating the contract citing delay and substandard performance. The Respondent sought interim protection under Section 9 of the Arbitration Act, which was initially denied. The Respondent then approached the High Court under Article 227, which granted interim relief by restraining the encashment of the BG.

The Appellant challenged the High Court's jurisdiction, arguing that an efficacious remedy under Section 37(1)(b) existed. The Supreme Court, however, upheld the High Court's intervention, emphasizing that while judicial interference should generally be minimal in arbitration matters, extraordinary situations — such as the risk of *irretrievable injustice or irreversible harm* — may warrant such interference.

Justice R. Mahadevan, writing for the bench (also comprising Justice J.B. Pardiwala), held that the High Court's order was a *temporary measure* preserving the status quo until the disposal of the pending Section 9 petition before the Commercial Court. The Court directed the parties to pursue all contentions before the Commercial Court, which was instructed to decide the matter within eight weeks. The validity of the BG is to be extended and maintained until then.

2. SC Demotes Deputy Collector for Contemptuous Demolition of Slum

In *Tata Mohan Rao v. S. Venkateswarlu & Ors.* [SLP(C) No. 10056-10057/2025], the Supreme Court on May 9, 2025, upheld the contempt conviction of a Deputy Collector (then Tahsildar) who

willfully violated High Court directions by forcibly demolishing the huts of slum-dwellers in Guntur, Andhra Pradesh, despite explicit judicial restraint orders.

A bench comprising Justices B.R. Gavai and A.G. Masih ruled that the officer's conduct struck at the "foundation of Rule of Law," and directed the State to demote him from Deputy Collector to Tahsildar. Additionally, a fine of ₹1 lakh was imposed, to be deposited within four weeks. The Court, however, adopted a lenient sentencing approach to avoid adversely impacting the officer's family, noting that incarceration would lead to dismissal and loss of livelihood.

Previously, the Andhra Pradesh High Court had found the officer guilty of contempt for disobeying two separate 2013 High Court orders that restrained him from disturbing possession of slum-dwellers until their applications for house site pattas were considered. Instead, he proceeded with the demolition using a contingent of 88 police personnel. The High Court sentenced him to two months' simple imprisonment and a fine of ₹2,000 — a decision upheld in appeal.

Rejecting pleas for leniency, the Supreme Court criticized the petitioner's refusal to accept demotion, despite being offered an opportunity to avoid imprisonment. "If petitioner expects humanitarian approach, he ought not to have acted in an inhumane manner," the Court remarked, reinforcing that government officials are duty-bound to comply with court orders regardless of circumstance.

3. CJI Sanjiv Khanna: A Tenure Marked by Quiet Resolve.

Chief Justice of India Sanjiv Khanna's brief yet impactful tenure (Nov 11, 2024 – May 13, 2025) will be remembered for its quiet strength, constitutional clarity, and moral steadfastness. Though he avoided grandstanding and remained low-profile outside the courtroom, CJI Khanna took bold and principled stands during moments of grave national and judicial importance.

Early in his tenure, CJI Khanna upheld the secular character of the Constitution, dismissing challenges to the 1976 Preamble amendment. He ruled that secularism and socialism were always implicit in the Constitution's ethos and not artificially inserted during the Emergency, thereby countering an increasingly vocal ideological push against secularism.

In response to rising communal tensions over temple-mosque disputes, he issued a vital order barring fresh suits against religious structures and halting ex parte survey orders. This timely intervention is credited with preventing wider unrest, especially following violence triggered by such actions in Sambhal and other regions.

His role in the challenge to the Waqf Amendment Act 2025 showcased judicial courage. CJI Khanna flagged serious constitutional concerns and compelled the Government to suspend the contentious provisions—despite personal attacks from political figures like BJP MP Nishikant Dubey, which he chose to ignore in favor of institutional dignity.

CJI Khanna also acted decisively in handling judicial misconduct. In the Yashwant Varma scandal involving large sums of cash, he initiated swift in-house inquiries, publicly released reports, and forwarded recommendations for action—demonstrating a commitment to transparency and judicial accountability. He also led a historic move for judges to disclose their assets publicly and ensured the publication of Collegium decisions from 2022–2025.

In matters of personal liberty, he passed significant judgments limiting arbitrary arrest powers under tax laws, censured the misuse of FIRs by state police, and sought safeguards in PMLA arrests.

Despite a conservative approach to judicial review, CJI Khanna did not hesitate to act when constitutional values were at stake. His tenure reflects principled leadership—firm, fair, and grounded in the Constitution—leaving behind a quiet but indelible legacy of integrity and restraint.

4. SC Directs NCR States to Enforce Firecracker Ban Under Section 5 of EPA

In *MC Mehta v. Union of India* [WP(C) No. 13029/1985], the Supreme Court on May 6, 2025, directed the states of Uttar Pradesh, Rajasthan, and Haryana to issue and enforce firecracker ban orders under Section 5 of the Environment (Protection) Act, 1986 (EPA) for National Capital Region (NCR) areas. The bench of Justices Abhay S. Oka and Ujjal Bhuyan emphasized that strict compliance with both the Court's directions and Section 5 orders is mandatory.

Section 5 empowers the Central Government to issue directions for implementation of the EPA, and this power was delegated to the concerned states in 1988. The Court noted that while Delhi had already enforced a year-round firecracker ban under Section 5, similar actions from other NCR states were pending. It mandated these states to issue equivalent directions within one month and set up enforcement machinery to ensure effective implementation.

The Court further held that directions under Section 5 must be taken to their "logical conclusion" by invoking penalties under Section 15 of the EPA, as amended by the Jan Vishwas Act, 2023, which now imposes monetary fines for non-compliance. It warned that officials failing to implement the directions could face contempt proceedings under the Contempt of Courts Act, 1971.

The bench also dismissed an interlocutory application challenging the firecracker ban in West Bengal, clarifying that the current proceedings concern only Delhi NCR.

5. Strands of Jus Cogens Under International Law

Jus cogens norms, also known as **peremptory norms of general international law**, represent the highest hierarchy of norms in the international legal system. These are fundamental principles accepted by the international community as norms from which **no derogation is permitted** (Article 53, Vienna Convention on the Law of Treaties, 1969). They apply universally and override all conflicting international agreements or customary laws.

Prohibition of Genocide: The international community universally recognizes the prohibition of genocide as a *jus cogens* norm. It imposes an obligation on all states to prevent and punish acts of genocide under customary and treaty law (e.g., Genocide Convention, 1948).

Prohibition of Slavery and the Slave Trade: Slavery, including practices akin to it such as human trafficking and forced labor, is absolutely prohibited. This norm has been reaffirmed in instruments like the Slavery Convention (1926) and ILO conventions.

Prohibition of Torture and Cruel, Inhuman or Degrading Treatment: Torture is universally prohibited, including in situations of war, terrorism, or national emergency. This norm is enshrined in the Convention Against Torture (1984) and recognized by numerous courts, including the ICJ and regional human rights tribunals.

Prohibition of Aggression and Use of Force: The UN Charter (Article 2(4)) reflects the jus cogens nature of the prohibition on the use of force except in self-defense or when authorized by the UN Security Council. Acts of aggression violate this norm.

Right to Self-Determination: Recognized in the UN Charter and the International Covenants on Human Rights (ICCPR and ICESCR), the right of peoples to self-determination is a peremptory norm, especially in the context of decolonization and occupation.

Prohibition of Racial Discrimination and Apartheid: The apartheid regime in South Africa led to the global recognition of apartheid and systematic racial discrimination as violations of *jus cogens*. Instruments include the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

Basic Rules of International Humanitarian Law (IHL): Certain core IHL rules—such as the protection of civilians and prohibition of targeting non-combatants—have attained *jus cogens* status, particularly those derived from the Geneva Conventions.

Weekly Focus

Case of the week : Cherubin Gregory v. State of Bihar (AIR 1964 SC 205)

Facts: In this case, the appellant, Cherubin Gregory, was convicted under Section 304A of the Indian Penal Code (IPC) for causing the death of a woman named Madilen. The incident occurred when Gregory, frustrated by repeated unauthorized use of his latrine by neighbors after its protective wall had fallen, installed a live, uninsulated copper wire across the passage to deter trespassers. On July 16, 1959, Madilen, while exiting the latrine, accidentally touched the electrified wire and suffered a fatal electric shock.

Legal Issues:

1. Whether the appellant's act of installing a live electric wire constituted a rash and negligent act under Section 304A IPC.
2. Whether the appellant could claim the right of private defense of property under Sections 97, 99, and 103 IPC.

Judgment: The Supreme Court upheld the conviction under Section 304A IPC, emphasizing that:

- The act of setting up a live, uninsulated wire without any warning was inherently dangerous and exhibited reckless disregard for human life.
- The right of private defense of property does not extend to actions that are likely to cause death or grievous harm, especially when the intrusion does not pose a threat to life or severe injury.
- Even though Madilen was a trespasser, the law does not permit property owners to inflict fatal injuries through dangerous traps

Significance: This case delineates the boundaries of the right to private defense concerning property. It establishes that while property owners have the right to protect their property, such protection must be reasonable and not pose undue risk to human life. The judgment reinforces the principle that the sanctity of human life supersedes property rights, and any defensive measures must align with this fundamental value.

PYQ Solution

The Fundamental Rights may be said to constitutionalise social values of existing society." Explain and illustrate.

The Fundamental Rights enshrined in the Constitution of India can be seen as a constitutional embodiment of the social values prevalent in society. These rights reflect the aspirations, principles, and social objectives that the framers of the Constitution sought to establish and protect. By guaranteeing certain fundamental rights to citizens, the Constitution serves to constitutionalize and protect the core social values of the existing society.

1. **Right to Equality:** The Right to Equality (Article 14-18) prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It reflects the social value of equality and non-discrimination, promoting a society where every individual is treated with fairness and equal opportunity.

2. **Right to Freedom:** The Right to Freedom (Article 19-22) encompasses several aspects such as freedom of speech and expression, assembly, association, movement, and profession. These rights reflect the values of liberty and individual autonomy, essential for a democratic society.

3. **Right against Exploitation:** The Right against Exploitation (Article 23-24) prohibits trafficking, forced labor, and child labor. It reflects the social value of dignity and protection of vulnerable sections of society.

4. **Right to Freedom of Religion:** The Right to Freedom of Religion (Article 25-28) guarantees the freedom of individuals to practice and propagate religion. It reflects the value of religious tolerance, diversity, and the promotion of harmonious coexistence in a multicultural society.

5. **Cultural and Educational Rights:** The Cultural and Educational Rights (Article 29-30) protect the rights of minorities to conserve their language, script, and culture. They reflect the social value of preserving cultural diversity and ensuring equal educational opportunities.

6. **Right to Constitutional Remedies:** The Right to Constitutional Remedies (Article 32) empowers individuals to seek legal remedies when their fundamental rights are violated. It reflects the value of access to justice and the rule of law, ensuring the protection and enforcement of other fundamental rights.

Illustration:

For instance, the Right to Equality has constitutionalized the social value of equal treatment and non-discrimination. It has played a vital role in addressing historical injustices and empowering marginalized sections of society. Affirmative action policies, such as reservations for Scheduled Castes, Scheduled Tribes, and Other Backward Classes in educational institutions and public employment, have been implemented to bridge the social and educational gaps and promote social equality.

Similarly, the Right to Freedom of Speech and Expression has constitutionalized the social value of freedom of thought and expression, providing a platform for individuals to voice their opinions, criticize the government, and participate in public discourse.

It has been instrumental in facilitating social reforms, fostering political debate, and promoting accountability and transparency in governance.

In these ways, the Fundamental Rights in the Constitution of India can be seen as constitutionalizing the social values of the existing society. They provide a framework to protect and promote the core principles, aspirations, and social objectives of the society, ensuring that these values are enshrined and upheld as fundamental rights for all citizens.

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