

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

15th - 31st Oct 2025

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1. Vicarious Liability under S.149 IPC Reaffirmed

In ***Haribhau @ Bhausaheb Dinkar Kharuse & Anr. v. State of Maharashtra (2025)***, the Supreme Court reiterated the settled legal principle under Section 149 of the Indian Penal Code (IPC) that once the existence of a common object among members of an unlawful assembly is established, each participant becomes vicariously liable for offences committed in pursuit of that object, even if he did not personally inflict the fatal blow. The Bench comprising Justices P.K. Mishra and Vipul M. Pancholi upheld the conviction of three accused persons who, though not the actual assailants causing death, were proven to have actively facilitated a premeditated assault resulting in one death and grievous injuries to others.

Relying upon the landmark precedent ***Masalti v. State of U.P. (AIR 1965 SC 202)***, the Court emphasized that it is unnecessary for every member to perform a distinct overt act; participation with the common object suffices for liability under Section 149 IPC. The Court found that the appellants—who had transported the armed co-accused to the crime scene and assisted in the execution of the assault—were not passive bystanders but conscious participants sharing the unlawful objective. Their actions, presence, and facilitative role demonstrated a meeting of minds and intent consistent with the unlawful assembly's purpose.

Affirming the Bombay High Court's decision and dismissing the appeal, the Supreme Court held that vicarious liability under Section 149 extends to all participants once collective intent and participation are proven.

2. Delay Rendering Arbitral Award: SC Clarifies Legal Consequence

In *M/s. Lancor Holdings Limited v. Prem Kumar Menon & Ors.* (2025), the **Supreme Court** elucidated the legal effect of **delay in pronouncing arbitral awards** under the *Arbitration and Conciliation Act, 1996*, holding that while **mere delay does not vitiate an award**, an **inordinate and unexplained delay** that **renders the award ineffective or unworkable** can justify **setting it aside** under **Section 34(2)(b)(ii)** or **Section 34(2A)** of the Act. The **Bench of Justices Sanjay Kumar and Satish Chandra Sharma** emphasized that the arbitral process, being intended as a **speedy and efficient alternative to litigation**, loses its essence when the award is delayed to the point of defeating justice.

The dispute arose out of a **Joint Development Agreement (JDA)** between the developer (*Lancor Holdings Ltd.*) and landowners led by **Prem Kumar Menon**. The arbitrator, a retired High Court judge, **reserved the award in July 2012 but delivered it only in March 2016**, without explanation. The delayed award invalidated the developer's sale deeds but **failed to grant consequential relief**, leaving the parties to **initiate another round of litigation**, thereby **defeating the purpose of arbitration**.

The Court held that **delay per se is not fatal**, but where such delay **adversely affects the reasoning or outcome**, or **exposes non-application of mind**, the award becomes **contrary to public policy** and **patently illegal**. It observed that **"an unexplained and undue delay in pronouncement, coupled with the arbitrator's failure to resolve the dispute effectively, vitiates the award."** Referring to **public policy considerations**, the Court reiterated that arbitration must not degenerate into an exercise marked by **inefficiency, futility, or judicial indifference**.

Notably, the Court criticized the arbitrator's **"rudderless approach,"** observing that after nearly four years, the arbitrator **failed to provide equitable relief, ignored evidence deficiencies, and compelled re-litigation**, violating the **principles of finality and efficiency**. Such conduct, the Court said, **"pitted the award against the very public policy underlying arbitration."**

Exercising its **extraordinary powers under Article 142 of the Constitution**, the Supreme Court declined to remit the matter for fresh arbitration and instead **crafted an equitable resolution**. It upheld the developer's sale deeds as **lawful and valid**, imposed a **penalty of ₹6.82 crores**, and directed payment of an **additional ₹3.18 crores** to the respondents, thereby bringing closure to a **21-year-old dispute**.

The judgment decisively establishes that **unexplained delay and failure to render a workable award strike at the heart of arbitral justice**, constituting grounds for **setting aside under Section 34**

3. Proof of Demand Essential for PC Act Conviction

In *P. Somaraju v. State of Andhra Pradesh* (2025), the **Supreme Court** reaffirmed a settled principle under the **Prevention of Corruption Act, 1988 (PC Act)** — that **mere recovery of tainted currency notes is insufficient for conviction** unless the **prosecution establishes both demand and voluntary acceptance** of illegal gratification **beyond reasonable doubt**. The Court, through a Bench comprising **Justices P.K. Mishra and Joymalya Bagchi**, set aside the Andhra Pradesh High Court's order convicting a **former Assistant Labour Commissioner**, restoring the **trial court's acquittal**.

The case involved an allegation that the appellant demanded and accepted a **₹3,000 bribe** for official favours. However, the Court noted that the prosecution's case **rested solely on the uncorroborated testimony of the complainant**, which was riddled with inconsistencies. The purported **independent witness** designated by the police to observe the transaction had, contrary to instructions, **remained outside the office** during the alleged demand and acceptance, rendering his evidence inconsequential.

Rejecting the High Court's reasoning, the Supreme Court emphasized that the **statutory presumption under Section 20** of the PC Act **does not arise automatically**. It becomes operative only when the **foundational facts of demand and acceptance** are proved. The Bench observed that **"without clear proof of the demand and its voluntary acceptance, recovery alone cannot sustain conviction under Sections 7 or 13 of the Act."**

The Court also expressed concern over the complainant's conduct in excluding the independent witness from the crucial interaction period, thereby **creating doubt about the fairness of the trap**. Although the **tainted notes** were recovered from the appellant's drawer, there was **no evidence** showing that he either **demanding or instructed their placement** there.

Referring to its earlier ruling in *Rajesh Gupta v. State* (2022 INSC 359), the Supreme Court concluded that **recovery without proof of demand and acceptance is legally inadequate**, acquitted the appellant, and **restored the trial court's judgment**.

4. Voice Samples Not Testimonial Evidence: Article 20(3) Inapplicable

In *Rahul Agarwal v. State of West Bengal & Anr.* (2025), the **Supreme Court** clarified a significant **constitutional question** concerning the **scope of Article 20(3)** of the *Constitution of India* — the right against self-incrimination. The Court held that a **Magistrate may lawfully direct any person, including witnesses**, to provide **voice samples** for investigative purposes. Such direction, the Court ruled, **does not violate Article 20(3)** because a **voice sample constitutes material, not testimonial, evidence**.

A Bench comprising **Chief Justice B.R. Gavai and Justice K. Vinod Chandran** reaffirmed the principles laid down in *Ritesh Sinha v. State of Uttar Pradesh* (2019) 8 SCC 1, which recognized the **judicial power of Magistrates** to order voice sampling even in the absence of an explicit statutory provision. The Court stressed that the expression **"a person"** used in *Ritesh Sinha* was deliberately broad, encompassing **both accused persons and witnesses**, thereby ensuring investigative parity and procedural fairness.

Emphasizing the **constitutional interpretation of Article 20(3)**, the Court reiterated that the protection against self-incrimination applies only to **testimonial compulsion**—that is, the compelled communication of personal knowledge or information that has a **directly incriminating nexus**. Citing the Constitution Bench ruling in *State of Bombay v. Kathi Kalu Oghad* (AIR 1961 SC 1808), the Bench observed that obtaining **physical evidence**, such as fingerprints, handwriting, DNA, or voice samples, **does not amount to compelling testimony**, as these merely aid comparison with evidence already discovered through investigation.

The Court further noted that the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** now **expressly incorporates Section 349**, authorizing Magistrates to direct the recording of voice samples. Thus, the Court concluded that such directions have **statutory backing** and do not impinge upon the **fundamental right under Article 20(3)**.

Setting aside the Calcutta High Court's contrary view, the Supreme Court held that the **mere act of furnishing a voice sample cannot, by itself, incriminate the giver**. It becomes incriminating only when linked with independent investigative material. Accordingly, the **Magistrate's order was upheld**, affirming that **voice sampling is constitutionally valid and investigatively necessary** within India's evolving procedural framework.

5. Writ Jurisdiction and Tribunal: SC Reiterates Constitutional Discipline

In *Leelavathi N. & Ors. v. State of Karnataka & Ors.* (2025), the **Supreme Court** reaffirmed the principle that **High Courts should refrain from exercising writ jurisdiction under Article 226** in matters that **squarely fall within the statutory domain of tribunals**, particularly when an **effective alternative remedy** exists. The Bench of **Justices J.K. Maheshwari and Vijay Bishnoi** dismissed appeals arising from the **Karnataka teachers' recruitment dispute**, upholding the Karnataka High Court Division Bench's ruling which had **relegated the petitioners to the Karnataka State Administrative Tribunal (KSAT)**.

The controversy stemmed from the rejection of applications of married **OBC women candidates** who had submitted **income certificates of their fathers instead of their husbands**, resulting in their exclusion from the OBC quota list. A Single Judge of the High Court, invoking Article 226, had directed their inclusion—displacing **451 other candidates** already on the provisional list. The Division Bench, however, reversed that decision, holding that the matter lay **within the exclusive jurisdiction of the KSAT**, a position the Supreme Court endorsed.

Drawing on the **Constitution Bench decision in *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261**, the Court emphasized that **tribunals function as the first forum of adjudication** in service and administrative disputes, and **High Courts should not bypass this statutory hierarchy** except in **exceptional circumstances**—such as **violation of fundamental rights, breach of natural justice, lack of jurisdiction, or challenge to statutory vires**. The Bench clarified that the **existence of writ power remains intact**, but its **exercise must be disciplined by the principle of alternate remedy** to maintain judicial efficiency and institutional propriety.

Rejecting reliance on *T.K. Rangarajan v. Government of Tamil Nadu* (2003) 6 SCC 581, the Court distinguished it as an **extraordinary case involving mass termination of two lakh employees**, unlike the **limited dispute involving 481 candidates** here. It held that **rejection of certificates** did not render the petitioners **remediless**, since **tribunals are competent and empowered** to grant appropriate relief as courts of first instance.

6. Hindu Succession Act Inapplicable to Scheduled Tribes

In *Nawang & Anr. v. Bahadur & Ors.* (2025), the **Supreme Court** unequivocally reiterated that the **Hindu Succession Act, 1956 (HSA)** does **not apply to members of Scheduled Tribes**, unless expressly extended by a **Central Government notification under Section 2(2)** of the Act. The Bench comprising **Justices Sanjay Karol and Prashant Kumar Mishra** set aside a Himachal Pradesh High Court direction that had applied the provisions of the HSA to daughters in tribal areas, allowing them inheritance rights on par with those under Hindu law.

The Court held that the High Court's sweeping direction was **contrary to Section 2(2)**, which clearly states that *"Nothing contained in this Act shall apply to members of any Scheduled Tribe within the meaning of Article 366(25) of the Constitution unless the Central Government, by notification in the*

Official Gazette, otherwise directs.” The Supreme Court observed that the High Court’s pronouncement—though motivated by notions of social justice—was **beyond its jurisdiction**, as the **issue was neither pleaded nor framed** in the underlying appeal.

Relying on its earlier ruling in *Tirth Kumar & Ors. v. Daduram & Ors.* (2024), the Court reaffirmed that **tribal communities continue to be governed by their own customary laws** in matters of succession and inheritance, unless legislative intervention dictates otherwise.

The Bench, while setting aside the High Court’s ruling, echoed its prior observations in *Kamla Neti v. LAO* (2023), urging the **Central Government and Parliament** to reconsider extending the **Hindu Succession Act** to Scheduled Tribes, thereby ensuring **uniformity and gender justice** in inheritance rights across communities.

7. Mexico’s Opposition to the “Unwilling or Unable” Doctrine under Article 51 UN Charter

Recently Mexico’s firm stance that the **right of self-defence under Article 51 of the UN Charter** is strictly limited to cases where **an armed attack occurs** between States. Mexico rejects the “**unwilling or unable doctrine**”, which allows a State to use force in another State’s territory against non-state actors when that State is allegedly unable or unwilling to act. According to Mexico, this doctrine lacks **both elements of customary international law** — consistent State practice and *opinio juris* — and therefore **cannot constitute lawful interpretation** of Article 51.

Citing **ICJ precedents** (*Nicaragua v. USA*, *Armed Activities on the Territory of Congo*, and the *Wall Advisory Opinion*), Mexico emphasizes that the **use of force against non-state actors** is illegal unless their conduct is **attributable to a State** under the **law of State responsibility (Article 8, ILC Draft Articles)**. It further asserts that **preventive or pre-emptive self-defence** contradicts the Charter’s text, which allows self-defence “if an armed attack occurs.”

Mexico warns that expanding Article 51 through vague doctrines undermines the **sovereignty and territorial integrity** of weaker States and erodes the **collective security framework** of the United Nations. The paper calls for **transparency in Security Council practice** regarding Article 51 reports and urges a return to strict compliance with the **jus ad bellum regime** to preserve international peace and legality.

8. International Legal Framework on Piracy and Armed Robbery at Sea

The International Law Commission’s (ILC) 2025 report on *Prevention and Repression of Piracy and Armed Robbery at Sea* emphasizes the **evolution of international law governing maritime crimes**. While the **United Nations Convention on the Law of the Sea (UNCLOS)** remains the central treaty (Articles 100–107), the report notes **gaps**—particularly the Convention’s omission of “armed robbery” at sea, a concept unknown in 1982. To address this lacuna, subsequent conventions—such as the **1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention)** and its **2005 Protocol**—expanded international obligations of cooperation and prosecution.

The Special Rapporteur highlights the **customary nature of the duty to cooperate** in repressing piracy, originally codified in Article 14 of the **1958 Convention on the High Seas**, and reinforced by regional mechanisms like the **Yaoundé Code of Conduct (2013)** and **ReCAAP (2004)**. The report further notes that modern threats, including private armed security on merchant vessels and “floating armouries,”

challenge the legal principles of **innocent passage** and **State responsibility** under Articles 4 and 5 of the **ILC Draft Articles on State Responsibility (2001)**.

Weekly Focus

Subhash Chandra Das Mushib v. Ganga Prosad Das Mushib (AIR 1967 SC 878)

Principle: *Burden of proof and the meaning of "position to dominate the will" under Section 16*

Facts: The plaintiff, an old and illiterate man, executed a gift deed in favour of his nephew. Later, he alleged that the deed was obtained through undue influence, arguing that the nephew, being in a position of authority and trust, took advantage of his weak mental and physical condition.

Held: The Supreme Court held that mere relationship or influence is not sufficient to prove undue influence. The plaintiff must show that the defendant was actually in a position to dominate his will, and that the transaction was unconscionable. Once this is shown, the burden shifts to the dominant party to prove that the contract was made freely and voluntarily.

Legal Significance:

- Clarified the two-step test under Section 16:
 1. Was the defendant in a position to dominate the will of the plaintiff?
 2. Is the transaction unconscionable?
- If both are proven, the presumption of undue influence arises.
- Established that influence per se is not undue; it must be improper or unfairly exercised.

PYQ Solution

Distinguish whether Recognition of States' is an act of policy or of law. Also distinguish between Constitutive and Declaratory theories on the recognition of States. [20 Marks,2021]

The recognition of states is a complex issue that involves both policy and legal considerations. It encompasses the formal acknowledgment by one state of the existence and legitimacy of another entity as a sovereign state. While the act of recognition involves elements of both policy and law, it is generally regarded as primarily an act of policy rather than a purely legal determination.

Recognition as an Act of Policy:

- Recognition of states is often driven by political considerations and is influenced by a range of factors, including geopolitical interests, economic considerations, diplomatic relations, and strategic alliances.
- States may choose to recognize or withhold recognition based on their assessment of the new entity's political stability, effective control over territory, adherence to international norms, and the perceived benefit of establishing diplomatic ties.

- Political recognition carries significant weight in shaping inter-state relations, facilitating diplomatic engagements, and conferring legitimacy on a newly emerging state.

Recognition as a Legal Aspect:

- While recognition of states is primarily a political act, it does have legal implications. International law recognizes that statehood is a matter of factual existence and effectiveness rather than a result of recognition.
- The Montevideo Convention on the Rights and Duties of States (1933) is a key legal instrument that sets out the criteria for statehood, including a permanent population, defined territory, a government, and capacity to enter into relations with other states. Fulfillment of these criteria establishes the legal foundation for statehood.

However, it is important to note that recognition is not a precondition for statehood under international law. A state can exist and function as a sovereign entity even without widespread recognition by the international community. Non-recognition by certain states does not negate the legal existence of a state if it meets the criteria for statehood.

Difference between Theories

The distinction between the constitutive theory and declaratory theory relates to differing approaches and perspectives on the recognition of states in international law.

Constitutive Theory: According to the constitutive theory, recognition is seen as a constitutive act by which a state is created or established as a subject of international law. Under this theory, recognition is considered a necessary and fundamental step for the emergence of statehood. In other words, a state exists as a legal entity only if it is recognized by other states.

Advocates of the constitutive theory argue that recognition by existing states is essential to confer legal personality and international legitimacy upon a new entity. It implies that statehood is contingent upon the recognition of other states, and until recognition is granted, a political entity cannot claim full rights and responsibilities of a state under international law.

Declaratory Theory: The declaratory theory, in contrast, takes a different approach to the recognition of states. It suggests that recognition is a declaratory act, stating that a state already exists as a matter of fact, and recognition simply acknowledges that pre-existing statehood. According to this theory, statehood is not dependent on recognition by other states, but rather on objective criteria such as effective control over territory, a permanent population, and a functioning government.

Proponents of the declaratory theory argue that recognition is a political act, not a constitutive one. They contend that states already possess the attributes of statehood by meeting the necessary criteria, and recognition merely acknowledges the existence of a state. In this view, recognition is not a prerequisite for statehood and does not create or confer legal status.

Implications and Significance:

The distinction between the constitutive and declaratory theories has practical implications in the field of international law. The constitutive theory places emphasis on the political act of recognition as a decisive factor in establishing statehood, making recognition a significant determinant of a state's legal status and international relations. On the other hand, the declaratory theory prioritizes objective criteria for statehood, suggesting that recognition is a matter of formality and does not alter the inherent legal status of a state.

In practice, the majority of states and international organizations tend to follow the declaratory theory, recognizing new states based on objective criteria rather than viewing recognition as a constitutive act. This approach allows for flexibility and pragmatism in responding to emerging political entities without the need for unanimous recognition by all states.

It is important to note that both theories coexist in practice, and the actual recognition practices of states often involve elements of both approaches, reflecting a combination of political and legal considerations. The distinction between the constitutive and declaratory theories provides a framework for understanding different perspectives on the recognition of states and their legal implications.

