

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 22nd Jan - 28th Jan 2024**

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## 1. ICJ Orders Israel

The International Court of Justice (ICJ), the highest court of the United Nations, has issued a landmark interim order in a case brought forward by South Africa, concerning allegations of genocide committed by Israel during the ongoing conflict in Gaza.

*Justice Joan E. Donoghue*, the presiding judge of the ICJ, expressed deep concern for the human tragedy unfolding in the region, acknowledging the opposing views of both parties involved.

### Interim Measures Ordered:

- The ICJ did not order Israel to cease its attacks but required Israel to "take all measures within its power" to prevent acts of genocide.
- Israel was urged to adhere to the Genocide Convention by preventing and punishing incitement to genocide and providing humanitarian aid.

### Limited Enforcement and Pending Case:

- The court's decisions are binding, but enforcement remains a challenge.
- The interim order is part of a wider, pending case that may take years for a final ruling.

### International Response and Pressure:

- The ruling has significant legal and political implications.
- It may increase international pressure on Israeli Prime Minister Benjamin Netanyahu to address the ongoing Israel-Hamas conflict.
- Israel might "quietly comply" with certain measures to avoid an unfavourable decision later on.

### South Africa's Case Against Israel:

- South Africa argued that Israel's actions violated the Genocide Convention, citing evidence such as videos and statements made by Israeli officials.
- Israel denied the genocide accusation and presented its defense, including declassified orders aimed at limiting harm to civilians.

### ICJ Ruling's Impact:

- The ruling directly affects the aftermath of the Israel-Hamas conflict, which began with a Hamas-led attack in October 2023.
- It may influence international opinion and calls for a ceasefire.

- Pressure could mount on the U.S. and President Biden regarding support for a ceasefire or military aid to Israel.

## 2. Supreme Court Clarifies Essential Elements of Cheating

In *Mariam Fasihuddin & Anr. v. State*, the Supreme Court of India has elucidated the essential elements of the offence of cheating under Section 420 of the Indian Penal Code (IPC). The court ruled that for an act to be considered cheating, it must involve a deceitful act that dishonestly induces a person to deliver property or valuable security, resulting in loss or damage to the victim.

### The Deceit-Delivery Dilemma

The court highlighted that the act of cheating involves not only deceit but also the act of dishonestly inducing someone to part with their property or valuable security. It clarified that a statement is considered deceitful when it is knowingly or recklessly false, intended to be acted upon by another person, and leads to damage or loss. This deception must be accompanied by an inducement to deliver property.

### Case Background: Passport Forgery

The case in question involved a husband filing a criminal complaint against his wife and her relatives, alleging that they forged his signature to obtain a passport for their minor child to travel abroad. The wife's actions were based on her husband's instructions, and no dishonest intent was established on her part.

### No Cheating or Forgery Found

The Supreme Court concluded that the wife's actions did not constitute the offence of cheating under Section 420 IPC, as they lacked the essential elements of deceit leading to the delivery of property and resultant loss or damage. Furthermore, the court held that the act did not amount to forgery since no dishonest intention was found on the part of the accused.

## 3. Railway Held Liable for Deficiency in Services

In a recent ruling, the District Consumer Disputes Redressal Commission-I (North District), presided by Divya Jyoti Jaipuria and member Harpreet Kaur Charya, held Northern Railways accountable for providing deficient services to a passenger. The complainant, Manan Aggarwal, had booked a third AC train ticket for a comfortable journey from New Delhi to Indore but encountered distressing conditions, particularly unsanitary train toilets and a lack of water supply.

### Complaint and Grievance

Manan Aggarwal, an advocate, raised a complaint against Northern Railways after his ordeal during the train journey. He found the train toilets in an appalling state with no proper cleanliness or water supply. Despite seeking assistance from the coach attendant, who was absent, and lodging complaints through official channels, including the "Rail Madad" portal and social media, the issues were not resolved by the time the train reached Indore. Aggarwal experienced physical discomfort, headaches, and even missed work due to the absence of basic amenities. A legal notice sent to the railway authorities also went unanswered, leading him to seek redressal through the commission.

### Commission's Observations

The Commission, in its decision, referred to the guidelines outlined in the Citizen's Charter on Passenger Services of Indian Railways. It emphasised the clear obligation of railway authorities to provide fundamental facilities, including clean toilets. The duties assigned to railway staff regarding cleanliness were also highlighted.

The Commission rejected the railway authorities' argument that toilets were merely amenities and not services under the Consumer Protection Act 2019, emphasising that the provision of clean toilets was a crucial service.

Moreover, the Commission noted that despite the railway authorities' claims of addressing the complaint through the 'Rail Madad, Grievance Redressal Mechanism,' there was no evidence to show whether the complainant was satisfied with the resolution. As a result, Northern Railways was found guilty of failing to provide essential amenities, constituting a deficiency in services as per the 'Citizen's Charter.'

### **Compensation and Litigation Expenses**

In response, the Commission ordered Northern Railways to compensate Manan Aggarwal with a lump sum of Rs.30,000 for the physical and mental distress he endured. An additional amount of Rs.10,000 was awarded as litigation expenses. Non-compliance with the order within 30 days would result in an interest rate of 7% per annum on the total amount.

## **4. Directors Cannot Be Parties to Arbitration under 'Group of Companies' Doctrine**

In Vingro Developments Pvt Ltd v. Nitya Shree Developers Pvt, the Delhi High Court clarified that directors of a company cannot be brought into arbitration proceedings using the 'Group of Companies' rule. The court explained that the relationship between a company and its directors is that of "Principal" and "Agent" as per the Indian Contract Act.

### **Background**

The case involved two Builder Buyer Agreements for a residential project, signed by respondent no. 2 on behalf of respondent no. 1. Both respondents no. 2 & 3 were directors of respondent no. 1. A dispute arose, leading to arbitration initiated by the petitioner. When the parties couldn't agree on an arbitrator, the petitioner approached the High Court.

### **What the Parties Argued**

#### **The respondents argued:**

- Respondent no. 3 didn't sign the arbitration agreement, so he shouldn't be part of it.
- Respondent no. 2 signed as a director, acting as an agent.
- Agents can't be held personally responsible for actions on behalf of their principals.
- Remove respondents nos. 2 & 3 from the case before going to arbitration.

#### **The petitioner countered:**

- Respondent no. 2 signed the agreement, so the objection doesn't hold.
- Respondent no. 3, despite not signing, should be part of the arbitration based on the 'Group of Companies Doctrine.'

### **Court's Decision**

The Delhi High Court reviewed the agreements and concluded they were mainly between the petitioner and respondent no. 1. It stated that directors can't be included in arbitration using the 'Group of Companies' rule. The court explained that the relationship between a company and its directors is defined by the "Principal" and "Agent" framework.

The Court cited the Indian Contract Act, which says agents can't be held personally responsible for actions unless there's an agreement saying otherwise. Since no such agreement existed here, respondent nos. 2 & 3 couldn't be personally held responsible for respondent no. 1's actions.

As a result, the dispute can proceed to arbitration without involving respondent nos. 2 & 3 as parties.

## 5. Prevent Mining in Aravali Range

The Supreme Court, in *T.N. GODAVARMAN THIRUMULPAD vs. UNION OF INDIA*, expressed a preliminary opinion that if the State of Rajasthan believes that mining activities in the Aravali Range pose a threat to the environment, it has the authority to prohibit such mining activities in the region. The Division Bench of Justices B.R. Gavai and Sandeep Mehta made these observations while considering applications related to the renewal and continuation of mining operations. The Court directed the State Government to evaluate these applications in accordance with the law.

The Court also reviewed a report from the Central Empowered Committee (CEC), appointed by the Court to oversee environmental issues. The Court found that the mining lease of the applicant(s) did not fall within the Aravali Hills, and no illegal mining was detected.

However, it noted that although the Forest Survey of India report did not identify illegal mining, it indicated that the areas were located within the Aravali Hill Range. Therefore, the Court requested the CEC to examine whether the classification of Aravali Hills and Ranges concerning mining permits should be continued.

### The Court's order stated:

"In so far as mining activities in Aravali Hills and Ranges are concerned, it will be in the larger public interest if all these issues are examined by the CEC, and a comprehensive direction is issued by this Court in that regard. We find the suggestion of the learned Amicus Curiae reasonable.

We request the CEC to examine the issue of whether the classification of Aravali Hills and Ranges regarding permitting mining needs to be continued or not. We also request the CEC to consult with experts in Geology before finalising its report. This should be completed within eight weeks."

Additionally, the Court noted that the issues concerning mining in Haryana and Rajasthan were common. To avoid conflicting orders, it directed the Registrar to obtain an order and present the matter before the same bench, as the issues in both states were interconnected.

It's worth noting that the primary case to which the current application is attached is a landmark case initiated in 1995 by T.N. Godavarman Thirumulpad, also known as "the green man." This case was filed to protect the Nilgiris forest land from illegal timber operations and has resulted in significant directions for the sustainable use of forests and the creation of a monitoring and implementation system.

## 6. Case of the Week

### Haynes v. Harwood [1935] 1 KB 146

#### Facts of the Case:

- In *Haynes v. Harwood*, the defendant's servant left a horse-drawn van unattended in a busy street in London.
- The horses became startled and bolted down the street.
- A police constable named Haynes saw the horses running towards a young mother and her child.
- In an attempt to stop the horses and prevent potential injury to the public, Constable Haynes suffered serious injuries.

**Issue:**

- The primary legal issue in *Haynes v. Harwood* was whether the defendant was liable for the injuries sustained by Constable Haynes, despite Haynes' voluntary intervention in the situation.

**Decision and Reasoning:**

- The Court of Appeal held that the defendant was liable for the injuries sustained by Constable Haynes.
- The reasoning was based on the principle of negligence. The court found that leaving a horse-drawn van unattended in a busy street constituted a breach of duty of care owed to the public.
- The court further held that the policeman's actions were a reasonably foreseeable result of the defendant's negligence.
- It was deemed foreseeable that a police officer, or any other passerby, might attempt to stop the horses to prevent harm to themselves or others.

**Key Legal Principles:**

- The case establishes important principles in the law of negligence and duty of care.
- It underscores the idea that a negligent act can create a foreseeable risk of harm, leading to liability if someone is injured while trying to prevent that harm.
- It also highlights the concept of 'rescue cases', where individuals who are injured while voluntarily intervening to prevent harm caused by someone else's negligence can claim compensation.

**7. Repeated PYQ****Q. The State Liability under the Law of Tort has undergone metamorphosis. Explain with the help of case laws.**

The concept of State liability in the law of torts in India has indeed undergone significant transformations over the years. Traditionally, the doctrine of sovereign immunity, which dictates that the State cannot be sued for its actions, was a cornerstone of legal systems derived from the British common law tradition. However, the democratic ethos and the constitutional framework of India have prompted a re-evaluation and gradual erosion of this doctrine.

**Early Doctrine of Sovereign Immunity**

Initially, the position in India was largely influenced by the English common law principle encapsulated in the maxim "Rex non potest peccare" (The King can do no wrong). This principle was upheld in the landmark case of *P&O Steam Navigation Co. v. Secretary of State for India* (1861) 5 Bom HCR 1, where it was held that the State or the sovereign could not be held liable for the acts committed by its servants while engaged in sovereign functions.

**Shift Towards Restricted Sovereign Immunity**

The rigid application of this doctrine, however, started to wane post-Independence, as it was increasingly seen as incompatible with the principles of justice, equity, and good conscience. The landmark case that signalled this shift was *State of Rajasthan v. Vidyawati* AIR 1962 SC 933. In this case, the Supreme Court held the State liable for the tortious act of its employee, marking a departure from the traditional notion of absolute immunity for sovereign acts.

**The Constitutional Perspective**

The Indian Constitution further accelerated this metamorphosis. Article 300 of the Constitution, which addresses the sue-ability of the State, has been interpreted to mean that the State can be sued for tortious acts committed by its servants in the course of employment.

**Development of Public Law Remedies**

Another significant development in the area of State liability is the emergence of public law remedies under the umbrella of constitutional torts. This was seen in cases like *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746, where the Supreme Court awarded compensation for the violation of fundamental rights, marking an evolution from purely private law remedies to a constitutional perspective in addressing tortious acts by the State.

In conclusion, the concept of State liability in the Indian law of torts has indeed undergone a significant metamorphosis. This evolution, influenced by judicial interpretations and constitutional mandates, reflects the growing emphasis on accountability, justice, and the protection of individual rights in the face of State actions.