

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 08th - 14th April 2024**

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## 1. Conservation and Climate Rights: The Great Indian Bustard Dilemma

In a landmark judgement in **MK Ranjitsinh And Ors. v. Union of India**, the Supreme Court of India has elevated the right to be free from the adverse effects of climate change to the status of a distinct fundamental right. This decision marks a significant step forward in the pursuit of a healthy environment and sustainable development.

While the right to live in a clean environment has long been recognized as part of the right to life under Article 21 of the Constitution, the Court now contends that protection from climate change is inseparable from the right to a wholesome environment. The escalating threat posed by climate change, manifested in rising temperatures, extreme weather events, food shortages, and shifts in disease patterns, highlights the urgency of addressing this issue as a separate right.

The Court's emphasis on climate change rights arose within the context of a unique conundrum involving the conservation of the critically endangered Great Indian Bustard. The case presented a clash between environmental protection and India's international commitments to emissions reduction and renewable energy development.

At the heart of the dilemma was a plea by three Union Ministries to modify a previous court order aimed at safeguarding the Great Indian Bustard from collisions with power transmission lines erected by solar energy companies in Rajasthan and Gujarat. The original order mandated the conversion of overhead power lines to underground ones, a measure deemed technically infeasible and financially burdensome by the renewable energy sector.

In response, the Court has tasked an expert committee with determining the appropriate balance between underground and overhead power lines, thus recalling its earlier directives. However, the

inherent tension between reducing carbon emissions and protecting endangered species persists, highlighting the need for a timely resolution.

The predicament surrounding the Great Indian Bustard epitomises the complex trade-offs inherent in environmental conservation efforts in the face of pressing climate imperatives. Finding a harmonious solution that reconciles competing interests is imperative to uphold both environmental sustainability and species preservation.

## 2. Finality and Justice: Lessons from the DMRC Dispute

In a recent landmark decision, the Supreme Court of India exercised its curative jurisdiction to overturn its earlier judgement, relieving the Delhi Metro Rail Corporation (DMRC) of a significant financial burden. The case, involving a dispute with a former concessionaire, highlights the delicate balance between finality in litigation and the imperative of substantive justice.

The dispute originated from a contract between DMRC and Delhi Airport Metro Express Private Ltd. (DAMEPL) for the construction, maintenance, and operation of a metro line. Following alleged contractual breaches, DAMEPL invoked arbitration, leading to a tribunal ruling in its favour in 2017. Despite this, a Division Bench of the Delhi High Court set aside the award, citing flaws in the arbitration process.

The legal saga escalated to the Supreme Court, which, in a 2021 judgement, restored the arbitration award in favour of DAMEPL. This decision was later upheld.

***The recourse to a curative petition shows the exceptional nature of the remedy, reserved for cases where there is a clear abuse of process or a gross miscarriage of justice. Article 142 of the Indian Constitution empowers the Supreme Court to pass orders necessary for doing "complete justice" in any cause or matter pending before it. In the DMRC case, this provision enabled the court to correct earlier errors and uphold the principles of fairness and equity.***

However, the prolonged legal battle also raises concerns about the efficiency of arbitration processes in India. With multiple levels of litigation available, including appeals to higher courts and curative petitions, the path to resolution can be arduous and discouraging for commercial litigants.

This case serves as a reminder of the crucial role of arbitrators and judges in ensuring that decisions are grounded in both fact and law. By upholding the integrity of arbitration proceedings and maintaining a balance between finality and justice, the judiciary can instil confidence in the dispute resolution mechanism and promote a conducive environment for commercial arbitration in India.

## 3. UN Sanctions Amid Israel-Iran Tensions

The recent escalation between Israel and Iran presents a significant test for the United Nations' sanctions regime under international law. As both nations turn to the UN Security Council amid ongoing hostilities, the use of sanctions emerges as a pivotal legal tool intended to maintain or restore international peace and security without resorting to armed conflict.

### Legal Basis for Sanctions

Under **Chapter VII** of the United Nations Charter, the Security Council holds the authority to determine the existence of any threat to peace, breach of peace, or act of aggression and to decide upon measures, excluding armed forces, to address such threats. These measures, detailed in **Article 41**, include a wide range of economic and individual sanctions, such as trade embargoes, financial restrictions, and travel bans. The legal process requires a resolution passed by at least nine of the fifteen Council members, including the affirmative votes of all five permanent members.

### The Israel-Iran Confrontation at the UN

In the latest confrontation, Israel's call for "all possible sanctions" against Iran was prompted by an Iranian attack, which was largely intercepted by Israel's military defences with assistance from US, French, and UK forces. This request indicates the gravity of the situation as perceived by Israel, framing Iran's actions as an egregious violation of international peace and security. Conversely, Iran claims self-defence, referencing an earlier airstrike in Syria that killed Iranian generals as a provocation justifying their actions.

These opposing narratives were central to the recent emergency meeting of the Security Council, where both nations argued vehemently for sanctions against each other. Israel labelled Iran as the "number one global sponsor of terror," while Iran accused Israel of genocidal practices in Gaza, showcasing the highly charged and politicised nature of discussions within international forums.

### Implementation Challenges and Political Complexities

The enforcement of UN sanctions, however, relies on the willingness and capacity of member states to implement Council decisions domestically. This dependency often leads to inconsistent application and effectiveness, reflecting varying national interests and geopolitical alliances. For example, the US's stance, as communicated by President Biden to Israeli Prime Minister Netanyahu, emphasises defence support for Israel but rejects involvement in offensive strikes.

## 4. Elections and Disclosure of Assets

In a significant ruling, the Supreme Court upheld the 2019 election of Independent MLA Karikho Kri from the Tezu Assembly constituency in Arunachal Pradesh. The decision, delivered by a bench comprising Justices Anirudhha Bose and Sanjay Kumar, overturned the Gauhati High Court's nullification of Kri's election.

The dispute arose from an election petition filed by the Congress candidate Nuney Tayang, who alleged that Kri failed to disclose three vehicles owned by his wife and son while filing his nomination papers, thus exercising undue influence. However, the Court found that the vehicles were either gifted or sold before the nomination, absolving Kri of any wrongdoing in their non-disclosure.

***Clarifying the requirement for asset disclosure by candidates, the Court emphasised that candidates are not obligated to disclose each and every movable asset unless it has substantial value or reflects a luxurious lifestyle. The judgement emphasised that a candidate's right to privacy persists, and voters do not have an absolute right to know every detail of a candidate's personal life.***

The Court's ruling established that candidates need not disclose ordinary possessions such as clothing, shoes, or furniture unless they constitute sizable assets or reflect upon the candidate's lifestyle significantly. However, assets of substantial value or indicative of a lavish lifestyle must be disclosed to the electorate.

Furthermore, the Court emphasised that there is no rigid rule regarding asset disclosure, and each case must be evaluated based on its merits. Ultimately, the Court set aside the High Court's decision, affirming Kri's election victory.

### **5. Legal Heirs Not Liable for Firm's Debts After Partner's Death**

In **Annapurna B. Uppin & Ors. v. Malsiddappa & Anr.**, the Supreme Court clarified that the legal heirs of a deceased partner in a firm do not inherit the liabilities of the partnership upon the partner's death. The case arose from a complaint seeking recovery of investment made in a partnership firm from the legal heirs of the deceased partner under the Consumer Protection Act of 1986.

The complainant argued that since the legal heirs inherited the estate of the deceased partner, they should be held liable for the firm's obligations. However, the Bench, comprising Justices Vikram Nath and Satish Chandra Sharma, set aside the complaint, stating that the liability of the deceased partner does not pass on to their legal heirs.

The judgement highlighted the absence of evidence indicating that the legal heirs became partners in the firm and assumed its assets and liabilities through a reconstituted partnership deed. It reiterated the well-settled legal principle that legal heirs do not automatically become liable for the firm's debts upon the partner's demise.

The Court's decision emphasises the importance of formalising changes in partnership structures through documented agreements. Without a clear reconstitution of the firm with the legal heirs as partners, they cannot be held accountable for the firm's obligations.

### **6. Case of the Week**

#### **Olga Tellis v. Bombay Municipal Corporation**

##### **Facts of the Case**

In the landmark case of **Olga Tellis v. Bombay Municipal Corporation**, the issue before the court revolved around the constitutionality of the Bombay Municipal Corporation's action to evict pavement dwellers from public streets and footpaths. The Bombay Municipal Corporation had initiated a drive to remove squatters from the streets, claiming it was necessary for maintaining the cleanliness and orderliness of the city.

##### **Legal Issues**

The central legal question in this case was whether the right to livelihood, particularly for the marginalised and impoverished members of society, is protected under the Indian Constitution. Additionally, the case examined the interplay between the right to life under Article 21 and the state's power to remove encroachments from public spaces.

### Judgement

The Supreme Court, in a historic decision, upheld the right to livelihood as an integral part of the right to life under Article 21 of the Indian Constitution. The court recognized that the pavement dwellers, though occupying public spaces unlawfully, did so out of sheer necessity as they lacked proper shelter and livelihood opportunities.

The court ruled that any action taken by the state that deprives individuals of their livelihood must meet the test of reasonableness under Article 14 of the Constitution. It held that the mere fact of encroachment did not justify the state's action to evict the pavement dwellers without providing alternative arrangements for their resettlement and rehabilitation.

The court emphasised the state's obligation to ensure social and economic justice for all citizens, particularly the vulnerable sections of society. It stated that while the state has the power to remove encroachments, such power must be exercised in a manner that respects the dignity and basic rights of the affected individuals.

In its judgement, the court directed the Bombay Municipal Corporation to refrain from evicting pavement dwellers without providing alternative accommodation and livelihood opportunities. It emphasised the need for a humane and compassionate approach in dealing with issues of urban poverty and homelessness.

The Olga Tellis case stands as a landmark judgement that expanded the scope of fundamental rights in India to include the right to livelihood as an essential component of the right to life. It highlighted the constitutional imperative of ensuring social and economic justice for all citizens, especially the marginalised sections of society.

### 7. Repeated PYQ

**Q.:**“The Right to Information Act, 2005 was enacted in order to promote transparency and accountability in the working of every public authority.” How far has this goal been achieved by the Right to Information Act, 2005 ? Critically Analyse

The Right to Information Act, 2005 (RTI Act) was instituted with the lofty goal of fostering transparency and accountability within public authorities. Enshrined within its provisions is the principle that access to information is the norm, with exemptions being the exception. However, the effectiveness of the Act in achieving its intended objectives warrants critical analysis, considering various exceptions and case law that have shaped its implementation.

#### Promotion of Transparency: A Mixed Record

The RTI Act unequivocally aimed to promote transparency within the workings of public authorities. **Section 3** of the Act asserts the right of citizens to access information held by these bodies. This provision establishes a foundational framework wherein transparency is not merely desirable but legally mandated. The judiciary, through decisions such as **B.R. Kapoor v. State of Tamil Nadu**, has reiterated this principle, emphasising that access to information is the rule rather than the exception.

Despite these provisions, the Act's efficacy in promoting transparency has encountered challenges. Exemptions outlined in **Section 8** of the Act provide public authorities with leeway to withhold information under specific circumstances. While these exemptions are ostensibly intended to safeguard legitimate interests such as national security and privacy, their application has sometimes resulted in opacity rather than transparency. The discretion afforded to public authorities in invoking these exemptions has led to concerns regarding potential abuse and arbitrary denial of information.

### **Accountability: A Complex Nexus**

Accountability, the other pillar of the RTI Act's objectives, is intrinsically linked to transparency. By enabling citizens to scrutinise the actions of public authorities, the Act seeks to hold them accountable for their decisions and conduct. The absence of locus standi as a prerequisite for accessing information, as established in **State of Jharkhand v. Navin Kumar**, further reinforces the Act's emphasis on accountability. Any person, irrespective of their involvement or interest in a matter, can seek information under the Act, thereby fostering a culture of accountability within public institutions.

However, the realisation of accountability through the RTI Act is not without impediments. The case of **Manoj Mishra v. Union of India** highlights the potential for misuse and abuse of the Act. While the Act encourages whistleblowers to expose wrongdoing and corruption, it also necessitates that their motives be genuine and in the public interest. The judiciary's admonition against the misuse of RTI for personal vendettas underscores the delicate balance between accountability and vigilantism.

### **Critical Analysis: Striking a Balance**

The effectiveness of the RTI Act in achieving its objectives lies in striking a delicate balance between transparency, accountability, and legitimate exceptions. While the Act has undoubtedly ushered in an era of increased access to information, its impact on transparency and accountability remains nuanced.

On one hand, the Act has empowered citizens to hold public authorities accountable by providing them with the tools to access information crucial for informed decision-making. Decisions such as **State of Jharkhand v. Navin Kumar** have widened the scope of access by removing barriers such as locus standi, thereby bolstering the Act's accountability framework.

However, challenges persist in realising the Act's objectives fully. The discretion granted to public authorities in invoking exemptions under Section 8 poses a significant hurdle to transparency. Instances of misuse, as evidenced in **Manoj Mishra v. Union of India**, underscore the need for stringent safeguards against abuse of the Act for ulterior motives.