

# Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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## Allahabad High Court Dismisses PIL Challenging 'Samvidhaan Hatya Diwas'

Allahabad High Court dismissed a Public Interest Litigation (PIL) filed by former Indian Police Service (IPS) officer Amitabh Thakur. The PIL contested the Central Government's notification declaring June 25, the day the Emergency was imposed in India in 1975, as 'Samvidhaan Hatya Diwas'. The notification was seen by the petitioner as a political move that misrepresented the events and implications of the Emergency.

### Political Matters

The bench, comprising Justice Sangeeta Chandra and Justice Shree Prakash Singh, firmly stated that the judiciary should not interfere in political matters or question the government's political wisdom. The Court's order emphasised the limited role of the judiciary in reviewing such notifications, which are inherently political decisions. "This Court...is of the considered opinion that it is the lookout of the Government for declaration to be made with regard to the excesses caused by the proclamation of Emergency on 25.06.1975," the Court observed.

### Petitioner's Arguments

In his petition, Amitabh Thakur argued that labelling June 25 as 'Samvidhaan Hatya Diwas' was inappropriate and sent a misleading message to the public regarding the Constitution of India. Thakur's legal representatives, Advocates Nutan Thakur and Deepak Kumar, contended that while the term 'Samvidhaan Hatya' highlighted the violations of people's rights during the Emergency, it was an exaggeration to claim that the Constitution itself was 'killed'.

The petitioners further argued that if the Constitution had indeed been 'killed', the subsequent revival of democracy through general elections would not have been possible. They suggested that the government could have chosen a more positive term, such as 'Samvidhan Raksha Diwas', to commemorate the day and educate the public about the importance of safeguarding constitutional rights.

### Respondents' Preliminary Objection

The counsel for the respondents raised a preliminary objection regarding the petitioner's credentials. They pointed out that Thakur had failed to disclose his full background, including the serious allegation of instigating a rape victim's suicide outside the Supreme Court premises. Despite Thakur's impressive qualifications, including degrees from IIT Kanpur and IIM Lucknow, and his status as a former IPS officer and political activist, the respondents argued that his incomplete disclosure undermined the credibility of his petition.

In response, Thakur's counsel contended that the Allahabad High Court Rules did not require petitioners to declare if they were accused in any criminal case. They maintained that Thakur's personal background should not detract from the legal merit of the PIL.

### Court's Decision

After considering the submissions from both parties, the Allahabad High Court concluded that it could not grant any effective remedy. The Court reiterated its stance that it could not question the Union Government's political decisions, thus dismissing Thakur's petition.

## Taxation Powers Over Mineral Rights

In **Mineral Area Development v. M/S Steel Authority Of India & Ors**, the Supreme Court addressed a significant constitutional question regarding the interpretation of taxation powers under the 7th Schedule of the Indian Constitution. The case revolved around whether regular entries in List I and List II could be interpreted to include taxation powers, specifically focusing on the states' ability to levy taxes on mineral rights under Entry 50 of List II.

A nine-judge Constitution Bench, led by Chief Justice of India DY Chandrachud, held that the power to levy taxes on mineral rights is constitutionally entrusted to the states under Entry 50 of List II. The Court clarified that this power is not limited by the Union's regulatory powers under Entry 54 of List I, which pertains to mines and mineral development. The Bench emphasised that Entries 50 and 54 are regulatory and do not fall under the domain of taxation entries, which are distinctly listed in the respective Union and State Lists.

### Entry 50 List II: States' Taxation Powers

The Court highlighted that Entry 50 of List II grants states the authority to tax mineral rights within their territories. This power, however, is subject to any limitations imposed by parliamentary laws relating to mineral development. The Court held that this entry is a specific taxing entry, and its interpretation should not be extended to include broader regulatory powers.

### Entry 54 List I: Regulatory Powers of the Union

Entry 54 of List I provides Parliament with the power to regulate mines and mineral development. The Court observed that this entry is general and does not encompass taxation powers. The Supreme Court stressed that interpreting this entry to include taxation would grant unconstitutional authority to both the Union and the states, disrupting the constitutional distribution of powers.

### The Sundararamier Principle

The Court reaffirmed the 'Sundararamier Principle', which states that taxing entries are enumerated separately from general regulatory entries in the 7th Schedule. According to this principle, taxation

powers cannot be derived from regulatory entries; they must be explicitly provided under specific taxing entries. The Court held that Entry 50 of List II is not an exception to this principle and reiterated that the power to tax must be expressly stated and cannot be implied.

### **Impact of the MMDR Act**

The Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act), enacted under Entry 54 of List I, was scrutinised for its potential impact on the states' taxation powers. The Court clarified that the MMDR Act does not impose limitations on the states' ability to levy taxes on mineral rights under Entry 50 of List II. The Act's provisions on royalty and other regulatory aspects do not translate into a restriction on the states' taxation powers.

### **Section 9 of the MMDR Act**

The Court specifically examined Section 9 of the MMDR Act, which deals with the payment of royalties on minerals. It concluded that royalty is not a tax on mineral rights, and therefore, the limitations on the enhancement of royalty rates do not affect the states' power to tax mineral rights.

### **Court Rules Section 354A IPC Gender-Specific**

Calcutta High Court held that sexual harassment charges under Section 354A of the Indian Penal Code (IPC) cannot be applied against women. The ruling came in the case of **Susmita Pandit versus State of West Bengal & Another**, where the court highlighted the gender-specific nature of this provision, which explicitly begins with the term "a man."

A single bench, presided over by Justice Ajay Kumar Gupta, carefully examined Section 354A of the IPC. The section begins with the phrase, "[354A. Sexual harassment and punishment for sexual harassment--(1) A man committing any of the following acts--," indicating that the provision applies exclusively to men. Justice Gupta stated, "It can be safely accepted that a female cannot be an accused under Section 354A of the IPC as is evident from very terminology as used in the said enactment."

### **Case Background**

The case originated from a criminal revisional application filed by Susmita Pandit under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973. The petition sought to quash the proceedings initiated against her. On September 15, 2018, the opposite party lodged a complaint alleging that Samir Pandit and Susmita Pandit had attempted to torture the complainant's mother. The complaint also claimed that Samir Pandit, the biological father of Susmita, had tried to molest the complainant while she was changing her dress.

### **Allegations and Proceedings**

The petitioner argued that she had no involvement in the alleged offences and that the charges against her were baseless. She contended that Section 354A could not be applied to her as the section is gender-specific and intended only for male offenders. The petitioner further argued that the charge sheet filed against her was an abuse of the legal process and required immediate judicial intervention.

### State's Counter-Argument

The State's counsel maintained that the petitioner, in concert with others, had threatened the complainant and her mother, and thus, the charges under Sections 354A, 506, and 34 IPC were applicable. They argued that the petitioner's involvement in the alleged offence, along with her father, constituted a common intention to commit the crime.

### Court's Findings

Upon reviewing the evidence, the Court found no specific role attributed to the petitioner regarding the allegations of sexual harassment. The allegations were primarily directed at Samir Pandit. The Court observed that the charges against Susmita were made with an ulterior motive, possibly driven by personal grudge. Consequently, the Court quashed the proceedings against her.

### Gender-Specific Nature of Section 354A

Justice Gupta's ruling emphasised the gender-specific language of Section 354A, which explicitly refers to "a man" as the perpetrator. The Court concluded that a woman could not be prosecuted under this section. This interpretation aligns with the legislative intent to address sexual harassment perpetrated by men.

### Contract Novation

In the case of **PMP Infratech Private Limited & Ors. v Rajasthan State Mines and Minerals Limited**, the Rajasthan High Court delivered a significant judgement concerning the novation of contracts and the limits of administrative authority in public sector enterprises. The Court ruled that a contract terminated following due process cannot be novated by the awardee itself, and administrative orders cannot override duly considered decisions affecting civil or business rights.

### Facts of the Case

Rajasthan State Mines & Minerals Ltd. (RSMML) had awarded a tender to United Coal Carrier (UCC), but due to dissatisfaction with UCC's work quality, the contract was terminated on December 24, 2023. Subsequently, PMP Infratech Pvt Ltd. (PMP) was issued a letter of acceptance to take over the work. However, following a call from RSMML's Chairman to the Managing Director (MD) on December 26, 2023, both the termination of UCC's contract and the letter of acceptance to PMP were placed in abeyance.

### Key Issues

The primary issues before the Court were:

1. Whether a contract once terminated by the awardee can be revived.
2. Whether the Chairman or any authority, not being an appellate authority or the court, can order the revival of an already terminated contract.

### Contract Termination and Novation

Justice Dinesh Mehta, who presided over the bench, emphasised the principles of transparency and fairness that must govern the actions of the state and its instrumentalities. The Court held that once a contract is terminated following due process, it cannot be revived by the awardee itself. Justice Mehta stated, "The termination of contract after following due procedure amounts to a civil death of a business deal. The same can normally not be revived even by the court, Appellate

Authority or Arbitrator, let alone by the Managing Director itself or by the Chairman of the awardee company."

### **Administrative Authority and Judicial Review**

The Court scrutinised the power of administrative orders to override considered decisions. It referred to the Supreme Court's decision in Subodh Kumar Singh Rathour vs. The Chief Executive Officers & Ors., which outlines the scope of judicial review in contractual disputes. The Court found that the telephonic direction by the Chairman lacked legal sanction and reason, making it a suitable case for judicial intervention under Article 226 of the Constitution.

### **Scope of Section 34 in Arbitration Act**

Gujarat High Court has clarified that petitions under Section 34 of the Arbitration and Conciliation Act, 1996, are not maintainable against the rejection of applications challenging the jurisdiction of an arbitrator under Section 16. This decision, rendered by a bench comprising Chief Justice Sunita Agarwal and Justice Aniruddha P. Mayee, provides crucial insights into the applicability and interpretation of jurisdictional challenges and interim awards in arbitration proceedings.

### **Section 16 and Kompetenz-Kompetenz Principle**

Section 16 of the Arbitration Act embodies the principle of Kompetenz-Kompetenz, which empowers arbitral tribunals to rule on their own jurisdiction. This includes addressing objections regarding the existence or validity of the arbitration agreement. The Court reiterated that objections to jurisdiction can be raised even if a party has participated in the appointment of the arbitrator.

### **Interim Awards and Section 34**

The Court noted that decisions by an arbitral tribunal on issues like limitation and res judicata are considered interim awards. These interim awards can be challenged independently under Section 34 of the Arbitration Act without waiting for the final award. The Court referred to the Supreme Court's decision in M/s Deep Industries Ltd. vs Oil And Natural Gas Corporation Ltd., which upheld the principle that disputes about jurisdiction do not imply a lack of inherent jurisdiction by the Arbitral Tribunal.

### **Section 37 and Appeals**

The High Court pointed out that while Section 37(2)(a) allows appeals against orders accepting jurisdictional pleas under Section 16, no appeal is provided for rejecting such pleas. The Court emphasised that the arbitral tribunal must proceed with arbitration, and the final award can then be challenged under Section 34.

### **Case of the Week: Arihant Udhyog vs State Of Rajasthan And Ors.**

In the Supreme Court case Arihant Udhyog vs State Of Rajasthan And Ors. (9 June 2017), the pivotal issue was whether the appellants were liable to pay market fees under the Rajasthan Agricultural Produce Markets Act, 1961. Central to this determination was the application of the Sale of Goods Act, 1930 to ascertain the point of transfer of ownership of the goods in question.

**Facts of the Case**

Arihant Udhyog and other appellants purchased agricultural produce outside the state of Rajasthan and transported it to market areas within Rajasthan. They argued that since the sales were completed outside Rajasthan, they were not liable to pay the market fees. Conversely, the respondents contended that the ownership of the goods transferred within the market areas in Rajasthan, thus making the market fees applicable.

**Intent of the Parties**

The Supreme Court's analysis focused on the intent of the parties, as discerned from the contract terms. The Court examined whether the responsibility for the goods—and consequently the ownership—was intended to pass upon delivery within the market area in Rajasthan. The Court found that the contracts specified the seller's responsibility ceased upon delivery, indicating the intention to transfer ownership at the point of delivery.

**Application of Section 19**

Applying Section 19, the Court noted the contract terms explicitly mentioned that the seller's responsibility ceased upon delivery. This indicated the parties' intention that ownership would transfer upon delivery within the market area. The Court highlighted the importance of the contract terms in determining the precise point of ownership transfer.

**Relevance of Sections 20 and 21**

The Court also considered the relevance of Sections 20 and 21. Section 20 was applicable as the goods were in a deliverable state and the contract was unconditional. This meant the property would pass when the contract was made. Section 21 further reinforced that since the seller had no additional obligations to make the goods deliverable, the transfer of ownership occurred upon delivery. This affirmed that the ownership transfer was intended to occur within the market area, aligning with the statutory provisions and confirming the applicability of the market fees.

**Repeated PYQ**

**Q. Explain different theories on the relationship between International law and Municipal law.**

**Ans.** The relationship between international law and municipal (domestic) law has been a subject of extensive debate among legal scholars and practitioners. Various theories attempt to explain how these two legal systems interact and influence each other. Each theory offers a distinct perspective on the integration and application of international law within domestic legal systems.

**Monism**

Monism posits that international law and municipal law form a single, unified legal system. According to monist theory, international law automatically becomes part of the domestic legal order without the need for any specific legislative act. This theory is often associated with the views of legal scholars like Hans Kelsen, who argued that there is a fundamental unity of law, and both international and municipal laws derive their validity from a single basic norm (**Grundnorm**).

In a monist system, international treaties and customary international law can be directly invoked in domestic courts. This means that if there is a conflict between international and municipal law, the former prevails. Countries like the **Netherlands** and **France** embody this approach, where international treaties have a superior status over domestic laws once ratified.

In **Nicaragua v. United States**, the International Court of Justice (ICJ) emphasised the supremacy of international law over domestic actions, reinforcing the monist perspective that international obligations must be respected by all state organs.

### Dualism

Dualism, on the other hand, maintains that international law and municipal law are separate and distinct legal systems. According to this theory, international law does not automatically have domestic effect. Instead, international treaties and norms must be explicitly incorporated into municipal law through legislative acts.

Dualist theory is closely associated with the views of scholars like Heinrich Triepel and Dionisio Anzilotti, who stressed the sovereignty and independence of national legal systems.

In dualist systems, domestic courts do not apply international law directly unless it has been transformed into national law. The **United Kingdom** and **Germany** are examples of countries with dualist legal systems, where the implementation of international treaties requires an act of Parliament or the Bundestag.

The UK case of **R v. Secretary of State for the Home Department, Ex parte Brind** illustrates the dualist approach. The House of Lords held that the European Convention on Human Rights could not be directly enforced in UK courts without specific domestic legislation.

### Harmonisation

Harmonisation theory seeks a middle ground between monism and dualism, advocating for the integration of international and municipal laws through a process of coordination and compatibility. This approach suggests that domestic legal systems should be adapted to align with international obligations, promoting coherence and minimising conflicts between the two legal orders.

Under harmonisation, domestic courts may interpret national laws in a manner consistent with international law, even if direct application is not possible. This theory emphasises the importance of judicial interpretation and legislative action to ensure that domestic laws do not contravene international norms.

In **Minister for Immigration and Ethnic Affairs v. Teoh**, the High Court of Australia recognized that ratification of international treaties, even without specific implementing legislation, creates a legitimate expectation that the government will act in conformity with its international obligations, illustrating a harmonisation approach.

### Transformation

Transformation theory is similar to dualism but emphasises the specific process by which international law becomes part of domestic law. It argues that international norms must be explicitly transformed into municipal law through a legislative act or other formal process. This

transformation is necessary for international law to have legal effect within the domestic legal system.

The Indian case of **Maganbhai Ishwarbhai Patel v. Union of India** illustrates transformation theory. The Supreme Court of India held that international treaties require legislative approval to have domestic effect, indicating the need for formal transformation.

