

## Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

17th Nov - 24th Nov 2024

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### 1. Essential Religious Practices: Judicial Review and Evolution

The doctrine of Essential Religious Practices (ERP) governs the extent to which religious practices are protected under Articles 25 and 26 of the Indian Constitution. These provisions ensure the freedom of religion while allowing the State to regulate secular activities linked to religion in the interest of public order, health, and morality.

#### Landmark Judgments

- 1954 - Shirur Mutt Case:** In *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindar Tirtha Swamiyar of Shirur Mutt*, the Supreme Court held that Article 25 protects religious practices unless they contravene public order, health, or morality. The Court emphasized that "essential" practices must be determined with reference to the religion's doctrines and rejected the State's proposal to limit constitutional protection to only "essential" practices.
- 1959 - Sardar Sarup Singh v. State of Punjab:** The Court upheld Section 148-B of the Sikh Gurudwaras Act, 1925, finding it did not infringe Article 26(b). Applying the ERP test, it concluded that direct elections to the Gurudwara Board were not essential to Sikhism, as no authoritative religious texts mandated them.
- 1961 - Durgah Committee v. Syed Hussain Ali:** This case challenged the Dargah Khwaja Saheb Act, 1955. The Court held that practices must be integral to religion to qualify as "essential." Secular

or superstitious practices, even if historically associated with religion, would not receive constitutional protection.

4. **1962 - Sardar Syedna Taher Saifuddin Saheb v. State of Bombay:** The Court ruled that the Bombay Prevention of Excommunication Act, 1949, violated Articles 25 and 26 for the Dawoodi Bohra Community. It held that the power of excommunication was essential to the community's religious identity and could not be curtailed by legislation.
5. **1972 - Seshammal v. State of Tamil Nadu:** Challenging the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1970, the petitioners argued it violated religious freedoms. The Court held that the appointment of Archakas (priests) was a secular matter, though their selection must conform to Agamas, which were integral to the religion.
6. **1997 - Sri Adi Visheshwara v. State of Uttar Pradesh:** The Court upheld the U.P. Kashi Vishwanath Temple Act, 1983, distinguishing between religious practices and secular management functions. It concluded that the Act pertained only to administrative aspects and did not infringe religious rights.
7. **2004 - Commissioner of Police v. Acharya Jagadisharananda Avadhuta:** The Court ruled that the Tandava Dance was not an essential practice of the Ananda Marga faith. Despite its inclusion in the sect's doctrines, the practice had not been integral since the faith's inception.
8. **2016 - Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu:** Revisiting the issue of Archakas' appointments, the Court upheld the government's directive barring discrimination based on caste but reaffirmed that religious denominations must follow Agamas for essential practices, provided these align with constitutional principles.
9. **2017 - Shayara Bano v. Union of India:** The Court declared the practice of Triple Talaq unconstitutional, ruling that it was not an essential practice under Islam. It found the practice contrary to Quranic principles and not indispensable to the faith.

### Key Principles of ERP Doctrine

1. **Integral Practices:** A practice is "essential" if its absence fundamentally alters the religion. Practices deemed secular, superstitious, or optional are excluded from constitutional protection.
2. **Religion-Specific Determination:** What constitutes an essential practice is primarily decided based on religious doctrines, customs, and authoritative texts.
3. **Secular Regulation:** The State may regulate secular aspects of religious institutions, such as administration and finances, to ensure public welfare.

## 2. Section 11 of the Arbitration and Conciliation Act, 1996

### Scope of Referral under Section 11

Section 11(6) of the Act empowers courts to appoint arbitrators when parties fail to agree. Post the 2015 amendment, the scope of judicial intervention under Section 11 was limited to examining the "existence" of an arbitration agreement. This legislative change aimed to minimize judicial interference at the stage of appointing arbitrators.

As clarified in *Duro Felguera S.A. v. Gangavaram Port Limited* [(2017) 9 SCC 729], the referral court's inquiry is confined to determining the existence of an arbitration agreement without delving into its validity or other merits.

The case of *Ajay Madhusudan Patel & Ors. v. Jyotrindra S. Patel & Ors.* (2024) addressed the contentious issue of whether non-signatories to an arbitration agreement, like the SRG Group, can be compelled to arbitrate. The Supreme Court examined the interplay of party consent, conduct, and the scope of referral courts under Section 11 of the Arbitration and Conciliation Act, 1996.

### Key Issues

1. **Existence of Arbitration Agreement:** The arbitration agreement under the Family Arrangement Agreement (FAA) was uncontested between the AMP and JRS Groups but challenged for the non-signatory SRG Group.
2. **Joinder of Non-Signatories:** The Court emphasized that a non-signatory might be bound if:
  - Its conduct shows consent to be part of the arbitration.
  - It played a substantial role in the performance of interlinked obligations.
3. **Limited Role of Referral Courts:** Courts should only verify the prima facie existence of an arbitration agreement and leave complex factual disputes for the arbitral tribunal (*Cox and Kings v. SAP India*).

### Findings

- **Composite Transactions:** Obligations in the FAA regarding Millenium and Deegee entities necessitated the SRG Group's involvement.
- **Prima Facie Evidence:** Emails, shared due diligence, and mediation communications suggested the SRG Group's connection to the FAA.

The Court referred the SRG Group's inclusion to the arbitral tribunal, aligning with the competence-competence principle.

### 3. Consumer Dispute on Delayed Possession in Housing Project

The case of *Dharmendra Sharma v. Agra Development Authority (ADA)* [Civil Appeals Nos. 2809-2810 & 6344 of 2024] centered on a dispute regarding ADA's failure to deliver possession of a residential flat in a timely manner and its non-compliance with statutory requirements under the UP Apartment Act and the RERA Act.

The appellant, Dharmendra Sharma, had deposited approximately ₹60 lakhs by 2012, expecting possession within six months. However, despite repeated requests, ADA delayed the possession and failed to provide statutory documents like the completion and firefighting clearance certificates.

One of the primary issues was whether the complaint filed in 2020 was time-barred under Section 24A of the Consumer Protection Act, 1986. ADA contended that the limitation period had expired as the cause of action arose with its possession offer in 2014.

The Supreme Court upheld the NCDRC's finding that repeated reminders from ADA and its acceptance of part payment in 2019 extended the limitation period under Sections 18 and 19 of the Limitation Act, 1963. The Court clarified that these interactions sustained the cause of action, making the 2020 filing within the limitation period.

ADA also challenged the NCDRC's pecuniary jurisdiction, arguing that the deposited amount was less than ₹1 crore.

- The Court dismissed this claim, affirming that the NCDRC's jurisdiction was valid as the appellant's claim included additional compensation for mental agony and harassment, which collectively exceeded ₹1 crore.
- The Court emphasized that the value of consumer claims is determined not just by the deposit but also by the aggregate relief sought, including compensation.

The appellant raised the critical issue of ADA's failure to obtain and provide the completion certificate and firefighting clearance certificate, essential for a valid possession offer. Relying on precedents, including *Debashis Sinha v. R.N.R. Enterprise* [(2023) 3 SCC 195], the Court held that ADA's 2014 possession offer was legally invalid due to the absence of these certificates. It noted that statutory compliance under the UP Apartment Act and the RERA Act is a precondition for delivering possession.

On the matter of interest, the appellant sought interest on the refund from the deposit date, while ADA argued against any interest due to delays in balance payments by the appellant. Balancing equities, the Court awarded interest at 9% p.a. from the complaint filing date in 2020 and an additional compensation of ₹15,00,000 for ADA's failure to meet statutory obligations. The Court also ordered the return of the non-judicial stamp papers worth ₹3,99,100 to the appellant.

#### 4. State Succession and issue under International Law

State succession refers to the legal and political process by which a newly formed state assumes rights and obligations from a predecessor state due to significant territorial or political changes. These changes may result from decolonization, secession, dissolution, unification, or annexation. Modern international law addresses state succession through customary principles, treaties, and evolving state practices.

##### Key Legal Frameworks

1. **Vienna Convention on Succession of States in Respect of Treaties (1978):** Governs treaty obligations following state succession. Recognizes "clean slate" theory for newly independent states but allows continuity of treaties in other cases.
2. **Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts (1983):** Deals with the transfer of assets and debts. Lacks widespread ratification but provides guidance on equitable distribution.
3. **Customary International Law:** Customary norms, including principles of equity, play a significant role where treaties are silent. Examples include respect for sovereignty, self-determination, and *pacta sunt servanda* (agreements must be kept).

##### Challenges in Modern Practice

1. **Territorial Disputes:** State succession often leads to disputes over boundaries and territories. The International Court of Justice (ICJ) and arbitration mechanisms are frequently invoked for resolution.
2. **Citizenship Issues:** Questions of nationality arise when individuals are affected by state succession. The principle of preventing statelessness guides international practice.

3. **International Obligations:** Continuity of human rights obligations, environmental treaties, and other non-territorial agreements is debated. Successor states are increasingly expected to uphold these commitments.
4. **Membership in International Organizations:** Determining the status of successor states in organizations like the UN can be contentious. For instance, Russia assumed the Soviet Union's seat in the UN Security Council without formal debate.

### Weekly Focus

#### **Case of the week: State of Uttar Pradesh v. Murari Lal & Brothers Ltd.**

The Supreme Court's decision in *State of Uttar Pradesh v. Murari Lal & Brothers Ltd.* (AIR 1971 SC 2210) clarified the mandatory requirements of Article 299(1) of the Indian Constitution for government contracts. The judgment established that non-compliance with these constitutional provisions renders a contract void, preventing its enforcement against the government or its agents. The case also examined the applicability of Sections 230(3) and 235 of the Indian Contract Act, 1872, in situations where agents act on behalf of the government without proper authorization.

#### **Background**

Murari Lal & Brothers Ltd. filed a suit against the State of Uttar Pradesh and three of its officials, alleging breach of a purported contract to reserve cold storage space for government potatoes. The company claimed ₹21,000 as damages for unutilized space it had reserved. The State denied liability, arguing that no contract was entered into in compliance with Article 299(1) of the Constitution. The trial court dismissed the suit against the State but held Defendant No. 3 liable under Section 230(3) of the Indian Contract Act. The High Court upheld the liability of Defendant No. 3, reasoning that he acted as an agent of the State.

#### **Key Legal Issues**

1. **Applicability of Article 299(1):** Whether the purported contract complied with the constitutional requirements of Article 299(1), which mandates that government contracts must be expressed and executed in the name of the President or Governor.
2. **Personal Liability of Agents (Section 230(3) of the Contract Act):** Whether the government official (Defendant No. 3) could be held personally liable for entering into a void contract.
3. **Implied Warranty of Authority (Section 235 of the Contract Act):** Whether the plaintiff could claim damages for breach of implied authority against the government agent.

#### **Judgment**

The Supreme Court held that the contract was void due to non-compliance with Article 299(1) and dismissed the suit against the government and its officials. Key findings included:

1. **Mandatory Nature of Article 299(1):** The Court reaffirmed that Article 299(1) is mandatory and prohibits any contract with the government unless it is expressed and executed in the name of the President or Governor and complies with statutory requirements. Non-compliance renders such a contract void and unenforceable.

2. **Personal Liability Under Section 230(3):** The Court rejected the High Court's reliance on Section 230(3), which makes agents personally liable if their principal cannot be sued. The Court emphasized that the provision applies only where a valid contract exists. Since the contract in this case was void, Section 230(3) was inapplicable.
3. **Implied Warranty of Authority Under Section 235:** The Court did not provide a definitive ruling on Section 235 but observed that it applies only when the agent's principal could ratify the contract. As a void contract under Article 299(1) cannot be ratified, Section 235 may not be applicable either.

### PYQ Solution

**Q. Discuss 'Grave and Sudden Provocation as a defence to charge of murder under IPC, 1860?**

In India, the defense of grave and sudden provocation is recognized under Section 300, Exception 1 of the IPC. This exception acknowledges that certain cases of culpable homicide may not amount to murder if they are committed in the heat of passion, upon sudden and grave provocation, and before there is time for the person's passion to cool down.

The first exception of Section 300 states:

"Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident."

To successfully invoke this defense, it is crucial to establish three key elements:

**1. Provocation:** The accused must have been provoked by the deceased or another person to commit the act of causing death. The provocation must be both grave and sudden. Grave provocation refers to an act that is likely to cause a reasonable person to lose self-control, while sudden provocation implies that the provoking act occurred unexpectedly, without any premeditation.

In the case of *K.M. Nanavati v. State of Maharashtra (AIR 1962 SC 605)*, the Supreme Court of India held that the sudden discovery of a spouse's infidelity can amount to grave and sudden provocation, justifying a reduction of the charge from murder to culpable homicide not amounting to murder.

**2. Heat of passion:** The accused's actions must have been a result of the immediate and intense emotional response to the provocation. This response must be such that it compromises the person's normal judgment and self-control. The accused must have acted in the "heat of passion" without any opportunity for rational reflection.

In the case of *Ramesh v. State of Rajasthan (AIR 2011 SC 1735)*, the Supreme Court clarified that the heat of passion can arise from an overwhelming emotion such as intense anger, fear, or sudden insult. The court emphasized that the passion should be so extreme that it overrides the accused's ability to reason.

**3. Absence of time for passion to cool down:** The act causing death must have been committed before there was a reasonable opportunity for the accused's passion to subside. The law recognizes that given enough time, a person's rationality and self-control may return, allowing them to reconsider their actions.

Indian courts have established that the time gap between the provocation and the act must be minimal.

In the case of *Dharmendrasinh v. State of Gujarat (AIR 2010 SC 2386)*, the Supreme Court stated that there should be no time for "the blood to cool down," meaning that the act causing death should be committed in the immediate aftermath of the provocation.

### **Important Limitations**

Two key limitations to the applicability of this defense have also been recognized:

1. The provocation cannot be something the accused sought out or brought upon themselves.
2. There must be a proportionality between the provocation and the response. An excessive response to a relatively minor provocation will not qualify for this defense.

## [Law Optional and GS Papers overlap](#)

### **Law optional and GS - II: Cooperative vs. Competitive Federalism in recent times**

The Indian Constitution envisages a federal structure wherein the Union and State Governments operate within their respective spheres of power. However, the practical manifestations of this federalism oscillate between cooperation and competition.

#### **Principle of Cooperative Federalism**

The term "cooperative federalism" is foundational to India's democratic governance. Chief Justice of India D.Y. Chandrachud, in a lecture in Mumbai, reiterated the need for cooperative federalism to transcend mere alignment with Union policies. He emphasized the need for active discussions and dialogues to nurture federal principles. His views resonate with the 1977 Supreme Court judgment that recognized cooperative federalism as the dominant model, where differences are resolved through deliberations to achieve shared developmental goals.

Chandrachud highlighted that contestation and competition are equally significant in a healthy democracy, asserting that cooperative federalism should coexist with competitive dynamics to preserve democratic integrity.

#### **Historical Perspectives and Academic Insights**

Albert Breton's critique of the often-idealized notion of cooperative federalism underscores the inherent tensions in vertical (Union-State) and horizontal (State-State) relationships. In his report, "Towards a Competitive Federalism," Breton questioned the feasibility of genuine cooperation, suggesting that it frequently veers toward coercion or manipulation.

In India, cooperative federalism became prominent during the era of centralized planning. However, as Raja Chelliah observed, this centralization often negated federalism. The informal mechanisms for fostering consensus under one-party dominance inhibited the evolution of robust systems for intergovernmental coordination and conflict resolution.

#### **Competitive Federalism: A Reality**

Contrary to the normative appeal of cooperation, competition often dominates intergovernmental relations in India. This competition manifests both vertically, between the Union and States, and horizontally,

among States. Electoral dynamics, resource sharing, fiscal negotiations, and investment attraction fuel this competitive environment.

However, the efficiency gains of competitive federalism are contingent on conditions like "competitive equality" and "cost-benefit appropriability." The absence of these preconditions, coupled with asymmetric power dynamics between the Union and States, often undermines fair competition.

### **Institutional Gaps and Recommendations**

India's federal framework lacks formal institutions for intergovernmental coordination and conflict resolution. Recommendations for establishing an inter-state council, reiterated by the Sarkaria Commission and the 63rd Constitutional Amendment, have failed to materialize effectively. The National Development Council and annual plan discussions under the erstwhile Planning Commission provided limited avenues for dialogue but were insufficient for resolving complex disputes.

Given the rising acrimony and unregulated competition, there is an urgent need for an independent and efficient institution to oversee intergovernmental relations. Such an institution must ensure fair competition, regulate predatory practices, and facilitate conflict resolution.

**Recent Times:** India's federalism is at a crossroads, balancing aspirations for cooperative engagement with the realities of competitive dynamics. The dichotomy between cooperation and competition underscores the need for robust institutional mechanisms, clear rules of engagement, and a commitment to equitable power-sharing. As India strives for a "Viksit Bharat," addressing these challenges will be crucial to preserving the integrity of its federal structure.



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