

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

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## ICJ Advisory Opinion on Occupied Palestinian Territory

The International Court of Justice (ICJ) recently delivered a significant advisory opinion concerning the legal ramifications of Israel's policies in the Occupied Palestinian Territory (OPT), including East Jerusalem. This opinion, notable for its breadth and depth, addresses a range of issues that deal with the complex legal and political dimensions of the occupation. The court concluded that Israel's prolonged occupation and its associated policies in the OPT contravene international law, necessitating Israel's expedited withdrawal from these territories.

### Unanimity and Consensus Within the Court

One of the most remarkable aspects of this advisory opinion is the degree of consensus among the justices, despite the complexities and sensitive nature of the issues at hand. The opinion includes several operative paragraphs decided by significant majorities. However, it is also marked by a substantial number of individual opinions, indicating a nuanced approach to the legal questions presented. This consensus shows the court's unified stance on the illegality of numerous Israeli practices under international humanitarian law and human rights law.

### Key Legal Findings

The court unanimously agreed on several points, particularly that many Israeli practices violate international laws, such as the rights to self-determination, prohibitions against racial discrimination, and norms against annexation through force. These practices include the establishment of settlements, the systemic failure to prevent violence by settlers, and the continued imposition of barriers to the social and economic development of the Palestinian people.

### The Issue of Gaza's Occupation

One of the novel aspects discussed was whether Gaza remains under Israeli occupation following the unilateral disengagement in 2005. The Court approached this issue with some ambiguity, which will likely be the subject of future detailed analysis and discussion.

### Prolongation of the Occupation

Interestingly, the Court noted that while the prolonged nature of an occupation does not inherently alter its legality under international humanitarian law, it becomes relevant when assessing

compliance with other international norms, particularly those related to self-determination and the prohibition of force.

### **Controversial Annexation and Territorial Acquisition**

A significant portion of the advisory opinion was devoted to Israel's policies aimed at annexing parts of the OPT. The Court reiterated that such annexation attempts, whether explicit or implicit, are incompatible with the fundamental principles of the international legal order, particularly the prohibition of territorial acquisition by force. This reaffirms and expands upon the principles outlined in the Court's earlier Wall advisory opinion.

### **Supreme Court Enhances Sentence in Bigamy Case**

In a recent decision by the Supreme Court of India, the sentence for a man and a woman found guilty of bigamy under Section 494 of the Indian Penal Code was significantly increased, setting a precedent on the seriousness of such offences. The case, titled *Baba Natarajan Prasad v M. Revathi*, involved the accused initially receiving a minor sentence of "imprisonment till the rising of the court." However, upon review, Justices CT Ravikumar and Sanjay Kumar deemed this punishment insufficient and enhanced it to a six-month imprisonment term.

#### **Rationale Behind Enhanced Sentence**

Justice CT Ravikumar, who authored the judgement, noted that bigamy is considered a serious offence and requires a punishment that reflects its severity. The original sentence was viewed as disproportionately lenient or a "flea-bite" sentence, which could potentially lead to a miscarriage of justice and diminish public confidence in the criminal justice system. The Court emphasised that punishment should correspond with the gravity of the offence, taking into account various factors such as the nature of the offence, the circumstances under which it was committed, and the offender's history.

#### **Judicial Discretion and Proportionality**

The Supreme Court's decision also referenced the case of *State of Karnataka v. Krishna alias Raju*, which asserts that the absence of a prescribed minimum sentence does not allow for negligible punishments. The Court stressed that sentencing, while discretionary, must align with the principle of proportionality. This principle ensures that the severity of the penalty adequately reflects the seriousness of the crime, thereby upholding societal order and respect for law.

Supreme Court Seeks Compliance on NALSA Judgement.

### **Compliance on NALSA Judgement**

In an important move to bolster transgender rights, the Supreme Court of India recently addressed non-compliance issues regarding its landmark 2014 decision in the *National Legal Services Authority vs Union of India (NALSA)*. This judgement recognized transgender individuals as a third gender and highlighted the necessity for affirmative action policies to enhance their access to education and employment opportunities. Despite the progressive ruling, implementation has been uneven across various states and union territories, leading to a contempt petition by transgender community members.

### **Contempt Petition and Demand for Action**

The petitioners have pointed out a significant gap in the effective implementation of policies intended to support the transgender community, particularly in terms of reservations in education and public employment. They seek enforcement of the Supreme Court's directive to classify transgender persons as a socially and educationally backward class, thereby making them eligible for various affirmative actions.

### **State and Union Territory Responses**

The Supreme Court, led by Chief Justice DY Chandrachud, has called for a detailed report on compliance from all states and union territories. While some have shown progress, others like Sikkim, Rajasthan, and Telangana, along with five Union Territories including Chandigarh and the National Capital Territory of Delhi, have yet to submit their responses. The court has set a deadline of August 31, 2024, for these regions to furnish their status reports.

### **Civil Imprisonment for Non-Compliance of Foreign Arbitral Award**

In a recent judgement, the Rajasthan High Court has taken a firm stance on enforcing compliance with a foreign arbitral award involving Emerald Stone Management Sia and Mamta Hygiene Products Pvt Ltd. The Court had previously declared the foreign award enforceable and executable as a decree of the court, marking a significant step towards upholding the sanctity of international arbitration agreements.

#### **Details of the Enforcement Directive**

Following the court's decree, Mamta Hygiene Products was ordered to disclose its assets by submitting an affidavit within four weeks from the date of the judgement. This step was crucial for the execution of the decree and to ensure that the awarded compensation could be recovered.

Emeraldstone Management Sia, the applicant in this case, was granted the liberty to seek further directions to enforce the foreign award as per legal provisions.

#### **Persistent Non-Compliance by the Respondent**

Despite the clear directives from the High Court, Mamta Hygiene Products failed to comply with the order to disclose its assets. The company did not submit the required affidavit within the stipulated time, nor did it provide the financial documents and deposit of Rs. 50,00,000 as subsequently directed. This failure led to multiple extensions and further directions from the court, which the respondent consistently ignored.

#### **Judicial Response to Non-Compliance**

Observing the continuous disregard for judicial orders, Dr. Justice Nupur Bhati of the Rajasthan High Court found it necessary to take stringent action. The court invoked Order 21 Rule 41 of the Code of Civil Procedure (CPC), which deals with consequences for failing to comply with a decree. As a result, Sanjay Rathi, the Director of Mamta Hygiene Products, was ordered to civil imprisonment for one month. This order was enforced with the assistance of the Superintendent of Police, Bhilwara, highlighting the court's commitment to ensuring compliance with its judgments.

## Madhya Pradesh High Court Advocates for Uniform Civil Code

The Madhya Pradesh High Court recently highlighted the necessity of implementing a Uniform Civil Code (UCC) in India, highlighting the persistent 'deprecating', 'fundamentalist', 'superstitious', and 'ultra-conservative' practices that are often shielded by the guise of faith and belief. Justice Anil Verma expressed that while Article 44 of the Indian Constitution advocates for a UCC, its actual realisation remains a theoretical notion rather than a practical reality. The court emphasised that a well-drafted UCC could curtail such practices and enhance national integrity.

### Background of the Dispute

The observations emerged during proceedings concerning a plea by two women seeking to quash an FIR lodged against them. The case involved accusations of physical and mental harassment related to dowry demands, where the complainant's husband allegedly pronounced 'Talaq' thrice and expelled her from the home. This case is set against the backdrop of the Muslim Women (Protection of Rights on Marriage) Act, 2019, which addresses the issue of triple talaq.

### Arguments and Findings

The counsel for the petitioners argued that the 2019 Act, particularly Sections 3 and 4, applies solely to Muslim husbands and not to the in-laws, thus the petitioners should not be held accountable under this Act for the pronouncement of triple talaq. The High Court agreed with this interpretation, leading to the quashing of the FIR under Section 4 against the petitioners. However, other allegations regarding dowry-related harassment remained intact, as the FIR contained specific accusations that needed further examination in trial.

### Implications of Delay in FIR Filing

The court also addressed the issue of the delayed FIR filing, noting that such delays in matrimonial disputes do not inherently justify quashing the proceedings. The complainant had delayed the filing in hopes of reconciling with her husband, a factor the court considered but found insufficient to dismiss the charges related to dowry harassment.

### Broader Reflection on Social Reforms

The case provided the court an opportunity to reflect on broader social and legal reforms. Justice Verma linked the need for a UCC to the historical context of the triple talaq legislation, suggesting that just as it took years for lawmakers to recognize and rectify the constitutional issues with triple talaq, it may be time to address the broader inconsistencies in personal laws with a UCC.

## Case of the Week: Atiabari Tea Co. v. State of Assam

### Facts of the Case

The dispute arose when the State of Assam, under the Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act, 1954, imposed a tax on goods transported by road or inland waterways. Atiabari Tea Co. Ltd., among others, challenged the validity of this tax arguing that it violated the freedom of inter-state commerce guaranteed by Article 301 of the Constitution. The primary concern was whether the imposed tax constituted a restriction on the free flow of commerce between states.

### Judgment and Reasoning

The Supreme Court, in a majority decision, held that the tax imposed by the Assam government was indeed restrictive of the free movement of goods and thus infringed Article 301. The Court opined that any tax that directly impeded the movement of goods was unconstitutional unless it was shown to be in the public interest and sanctioned by Parliament under Article 302.

Justice Gajendragadkar, in his leading opinion, emphasised that the freedom guaranteed by Article 301 is not just freedom from physical barriers but also from fiscal barriers that could hinder the movement of goods. However, the Court also noted that not all taxes would automatically contravene Article 301; only those having a direct and immediate effect on trade would do so.

This decision was significant for its interpretation of the constitutional provisions relating to commerce. It established a framework within which the extent of state power to regulate trade through taxation was to be measured.

Moreover, the case set a precedent that was further developed in subsequent cases, like the *Automobile Transport Rajasthan Ltd. v. State of Rajasthan*, which introduced the concept of compensatory taxes not being violative of Article 301. The judgement in *Atiabari Tea Co.* thus serves as a foundational stone in the jurisprudence relating to the freedom of trade and commerce in India.

### Repeated PYQ

**Q. Discuss when the infringement of a trademark occurs? Discuss the essentials of infringement of trademark. Write down the acts not constituting infringement of registered trademark.**

**Ans.** Trademark infringement in India is a critical issue governed under Section 29 of the Trademarks Act, 1999. It occurs when a person, not being the registered proprietor or a user of the trademark, uses a mark that is identical or deceptively similar to a registered trademark, in connection to goods or services for which the trademark is registered, leading to confusion or a likelihood of association with the registered mark .

The infringement can be outlined under three main circumstances:

- 1. Identical Mark, Similar Goods:** Use of an identical mark for similar types of goods or services can lead to infringement if it causes confusion.
- 2. Similar Mark, Similar Goods:** If the mark is similar (not identical) and the goods or services are similar, it still may be considered infringement if it leads to public confusion or association with the registered trademark.
- 3. Reputation and Misuse:** Even if the goods or services are not similar, the use of a mark that is identical or similar to a trademark with a reputation in India constitutes infringement if it takes unfair advantage of or is detrimental to the distinctive character or reputation of the registered trademark .

### Acts Not Constituting Trademark Infringement

Certain activities are explicitly recognized under the law as not constituting trademark infringement, providing a safe harbour for individuals and businesses:

1. **Use of One's Own Name or Address:** The use of one's own name or address, or that of their business, in a manner that is honest and not intended to cause confusion.
2. **Descriptive Use:** The use of the mark in a way that is descriptive and indicative of the kind, quality, intended purpose, or geographical origin of the goods or services.
3. **Use Concerning Services or Goods Not Registered:** If the mark is used in relation to services or goods for which it is not registered, there is no infringement unless it falls under the reputation misuse clause mentioned earlier .

### **Defences and Remedies**

In case of alleged infringement, the defendant may assert several defences including the non-similarity of the mark, the dissimilarity between the goods/services involved, or the honest concurrent use of the mark. Legal remedies available to the plaintiff in cases of infringement include injunctions, damages, or accounts of profits, aimed at compensating for the misuse of the trademark.

