

## Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**16th Mar - 22nd March 2025**

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### 1) Arbitration Clause vs. Consumer Forum Jurisdiction

In *M/S Citicorp Finance (India) Ltd. v. Snehasis Nanda*, An important ruling, the Supreme Court reaffirmed that **consumer disputes cannot be compulsorily referred to arbitration** solely because an arbitration clause exists in the agreement. The judgment reiterates the principle laid down in *Emaar MGF Land Ltd. v. Aftab Singh* and *M. Hemalatha Devi v. B. Udayasri*, confirming that **a consumer has the exclusive right to choose between arbitration and approaching the Consumer Forum**, and such disputes are considered **non-arbitrable**, unless the consumer voluntarily opts for arbitration.

#### Facts:

The respondent (flat owner) filed a complaint against Citicorp Finance before the NCDRC. Though a tripartite agreement (between the respondent, borrower, and financier) contained an arbitration clause, the respondent alleged breach and sought redress from the consumer forum instead. The NCDRC ruled in favor of the respondent, awarding compensation. Citicorp appealed, arguing the matter should be referred to arbitration.

#### Supreme Court's Holding:

The Court held that **mere existence of an arbitration clause does not oust the jurisdiction of the Consumer Forum**, particularly under welfare legislation like the Consumer Protection Act. It further emphasized that **arbitration cannot be imposed unilaterally**, especially when the existence of the agreement is itself disputed. Also, the financier (appellant) was not deemed a "consumer" under the Act due to lack of privity.

This case established the **primacy of consumer choice** and the **non-arbitrable nature of consumer disputes**, reinforcing that arbitration cannot override statutory consumer rights.

### 2) FIR Against Sitting Judges & In-House Enquiry Procedure

As per the landmark Supreme Court judgment in *K. Veeraswami v. Union of India* (1991), **no FIR or criminal proceedings can be initiated against a sitting judge without prior consultation with the Chief Justice of India (CJI)**. The judgment clarifies that judges are *public servants* under the Prevention of Corruption Act, and hence can be prosecuted—but only with presidential sanction, granted after CJI's advice.

Once the Chief Justice of India is satisfied that the allegations are prima facie credible, the CJI has to advise the President of India to allow the police to register an FIR.

*"In order to adequately protect a Judge from frivolous prosecution and unnecessary harassment the President will consult the Chief Justice of India who will consider all the materials placed before him and tender his advice to the President for giving sanction to launch prosecution or for filing FIR against the Judge concerned after being satisfied in the matter."*

### In-House Enquiry Procedure:

Evolved through *Veeraswami* (1991), *Ravichandran Iyer v. Justice Bhattacharjee* (1995), and clarified in *Additional District Judge v. Registrar General* (2015), the *In-House Procedure* is a **confidential, internal enquiry** mechanism. Key steps include:

1. Initial assessment by the Chief Justice (of HC or SC).
2. If prima facie case exists, consultation with the CJI.
3. Constitution of a 3-member committee (two CJ's of HCs + one HC judge) by the CJI.
4. Committee enquires and submits a report to the CJI.
5. If serious misconduct is found, judge may be asked to resign or face impeachment.

### 3) When Does Offence Under Section 138 NI Act Arise?

In *Vishnoo Mittal v. M/s Shakti Trading Company*, the Supreme Court clarified a key aspect of the offence under **Section 138 of the Negotiable Instruments Act, 1881 (NI Act)**—that mere dishonour of a cheque does **not** constitute an offence *per se*. The offence arises **only when the drawer fails to make payment within 15 days after receipt of the statutory demand notice**.

#### Facts:

The appellant, a former director of a company, sought to quash criminal proceedings under Section 138 NI Act. Though the cheque in question was dishonoured *before* a moratorium was declared under the Insolvency and Bankruptcy Code (IBC) on 25.07.2018, the **demand notice was issued on 06.08.2018—after the moratorium**, and the 15-day period expired on 21.08.2018. Hence, the Court held that the cause of action under Section 138 arose **after** the IBC moratorium, and thus, **prosecution could not continue** due to the legal bar under Section 14 of the IBC.

#### Key Legal Points:

- **Cheque dishonour alone is not enough**; offence under S.138 arises only upon:
  1. Dishonour of cheque;
  2. Issuance of demand notice within 30 days;
  3. Non-payment within 15 days of receipt of such notice.
- The Court relied on *Jugesh Sehgal v. Shamsher Singh Gogi* (2009) to outline the **six cumulative ingredients** required for a Section 138 offence.
- Once a moratorium under IBC is in place, criminal proceedings for recovery (including under S.138) are **not maintainable** if cause of action arises post-moratorium.

### 4). Basis of Jurisdiction of the International Court of Justice (ICJ)

The **International Court of Justice (ICJ)** exercises jurisdiction in **contentious cases** solely on the **consent of States** involved. This consent determines how a case may be brought before the Court. The Court does not possess *automatic* jurisdiction over disputes; it can adjudicate only where States have agreed to its jurisdiction, through one of several methods provided under its Statute.

**1. Special Agreement (Art. 36(1)):** States may **jointly agree** to submit a dispute to the ICJ through a *special agreement*. This is a mutual, ad hoc arrangement tailored for a specific dispute. The case is initiated by notifying the Registry, and must identify the subject and parties.

**2. Treaties and Conventions (Art. 36(1)):** Many treaties contain clauses conferring jurisdiction upon the ICJ for disputes arising under them. A State can initiate proceedings via a **unilateral application**, referencing the relevant treaty provision. Article 37 extends ICJ jurisdiction to treaties that originally designated the **Permanent Court of International Justice (PCIJ)**.

**3. Compulsory Jurisdiction (Art. 36(2)-(5)):** States may **unilaterally declare** acceptance of the Court's jurisdiction over certain types of **legal disputes** (e.g., treaty interpretation, breaches of international obligations), provided reciprocity exists. Declarations are deposited with the UN Secretary-General and bind only mutually consenting States.

**4. Forum Prorogatum:** A State that has **not accepted** ICJ jurisdiction can still **voluntarily submit** to it after being served with an application. This **post-facto consent** (forum prorogatum) gives the Court jurisdiction.

**5. Court's Power to Decide Jurisdiction (Art. 36(6)):** The Court has the **exclusive authority** to determine its own jurisdiction if challenged. Preliminary objections can be filed under **Article 79 of the Rules**.

**6. Interpretation of Judgments (Art. 60):** If a dispute arises over the **scope or meaning** of a judgment, any party may seek **interpretation**, either jointly or unilaterally.

**7. Revision of Judgments (Art. 61):** A party may seek **revision** if a **new, decisive fact** is discovered, unknown at the time of judgment, and not due to that party's negligence.

## 5. Supreme Court on Auroville Township and Sustainable Development

The Supreme Court in *The Auroville Foundation v. Navroz Kersasp Mody & Ors.* set aside an order passed by the National Green Tribunal (NGT), Southern Zone Bench, which had **barred the Auroville Foundation** from continuing developmental activities in its international township in Puducherry **without first obtaining Environmental Clearance (EC)**. The NGT's order stemmed from a complaint alleging deforestation and environmental degradation.

### Legal Issues:

1. Whether the NGT had jurisdiction to stop the project without evidence of statutory violations.
2. Whether developmental rights could coexist with environmental protections under the Constitution.

### Supreme Court's Findings:

- **No Violation of Environmental Law:** The Court found **no breach** of any existing environmental regulation by the Auroville Foundation.
- **NGT Exceeded Jurisdiction:** The NGT's directions were held to be **legally untenable** and **passed without jurisdiction**.

- **Right to Development Recognized:** Justice Trivedi emphasized that while the **right to a clean environment** is part of **Article 14 and 21**, the **right to development** also derives support from **Articles 14, 19, and 21**.
- The Court stressed the need for **sustainable development**, balancing **environmental concerns** with **legitimate developmental aspirations**.

This ruling reinforces the **doctrine of sustainable development** and serves as a reminder that **environmental concerns must not completely eclipse the right to development**, particularly when no legal violations are shown. The judgment underlines that **administrative and judicial overreach** must be avoided in the name of environmental protection.

### Weekly Focus

#### **Case of the week : *Satyabrata Ghose v. Mugneeram Bangur & Co***

In the landmark judgment of *Satyabrata Ghose v. Mugneeram Bangur & Co.*, the Supreme Court of India addressed the applicability of the doctrine of frustration within the framework of the Indian Contract Act, 1872. The case arose when the respondent company, after agreeing to sell and develop land for the appellant, claimed that government requisition during wartime rendered the contract impossible to perform.

#### **Key Legal Principles:**

1. **Exhaustiveness of the Indian Contract Act:** The Supreme Court emphasized that the Indian Contract Act is exhaustive concerning matters it explicitly addresses. Therefore, it is impermissible to import principles from English law into areas already covered by the Act.

The Court stated:

"It must be held also that to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is not permissible to import the principles of English law de hors these statutory provisions."

2. **Doctrine of Frustration under Section 56:** The Court clarified that the doctrine of frustration is encapsulated within Section 56 of the Indian Contract Act, which deals with the effect of supervening impossibility or illegality on contractual obligations. The term "impossible" in this context is to be understood practically, not literally.

The Court noted:

"The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstance totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do."

3. **Persuasive Value of English Law:** While acknowledging that decisions of English courts can offer persuasive guidance, the Supreme Court asserted that they do not bind Indian courts when interpreting provisions of the Indian Contract Act. The Court highlighted the necessity of adhering to the statutory framework established by Indian legislation.

**PYQ Solution****1. Briefly explain the grounds on which administrative actions can be subjected to judicial review. (10 MARKS)**

Judicial review serves as a vital mechanism for courts to assess the legality and propriety of administrative actions, ensuring that public authorities act within their legal bounds and uphold principles of fairness and justice. The primary grounds upon which administrative actions can be subjected to judicial review, elucidated through pertinent case law, include:

1. **Illegality:** This ground arises when an administrative authority exceeds its legal powers or fails to act within the confines of the law. For instance, in *State of Gujarat v. Patel Raghav Nath* (1969), the revisional authority, while exercising powers under the Land Revenue Code, delved into questions of title, which was beyond its jurisdiction.

The Supreme Court observed that when the title of the occupant was in dispute, the appropriate course would be to direct the parties to approach the civil court and not to decide the question itself.

2. **Irrationality (Unreasonableness):** An action is deemed irrational if it is so unreasonable that no reasonable authority would have made such a decision. This principle was articulated in the landmark case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948), giving rise to the "Wednesbury unreasonableness" standard. According to this principle, courts have the power to interfere in a decision if it is absurd and no reasonable decision-maker would have made it.
3. **Procedural Impropriety:** This ground addresses failures in adhering to prescribed procedures or breaches of natural justice principles.

In *Maneka Gandhi v. Union of India* (1978), the Supreme Court emphasized the necessity of adhering to the principles of natural justice, holding that the procedure established by law must be fair, just, and reasonable, thereby reinforcing the importance of procedural propriety in administrative actions.

4. **Proportionality:** Originating from European administrative law, proportionality assesses whether the means used to achieve a particular objective are appropriate and not excessive.

In *Om Kumar v. Union of India* (2001), the Supreme Court recognized the applicability of the proportionality principle in administrative law, particularly when administrative actions infringe upon fundamental rights, necessitating a balance between the action taken and the right affected.

5. **Legitimate Expectation:** When an individual has been led to anticipate a certain treatment or benefit based on a public authority's representations or consistent past practices, they may challenge decisions that frustrate these expectations without adequate justification.

In *Navjyoti Co-op. Group Housing Society v. Union of India* (1992), the Supreme Court held that the doctrine of legitimate expectation arises when a person has been led to believe that certain procedures will be followed, and failure to adhere to such expectations can be grounds for challenging administrative actions.