

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 11th March - 17th March 2024**

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## 1. Supreme Court Dismisses PIL on Voting Rights as Fundamental Rights

In **DEVADIPTA DAS vs. UNION OF INDIA**, the Supreme Court of India made a significant decision by refusing to entertain a Public Interest Litigation (PIL) that sought to have voting rights declared as part of the fundamental rights under the Constitution. The PIL, presented before the highest court, aimed to secure a judicial declaration that would elevate the status of voting rights, underscoring their importance in a democratic setup.

Chief Justice of India (CJI) underscored the court's requirement for a "live controversy" or a "live lis" (legal dispute) as a precondition for exercising jurisdiction under Article 32 of the Constitution. This principle necessitates an actual, ongoing dispute for the court to intervene and exercise its powers.

Despite the advocate's argument that there was an imminent threat to the voting rights in India, which warranted the court's intervention, the Chief Justice expressed that the court did not identify any evidence of such a live issue. The bench remarked, "We do not find the existence of any such live issue which warrants the jurisdiction under Article 32. We dismiss without expressing upon the merits."

The advocate attempting to draw parallels cited instances from countries such as the USA and the UK, where rogue organisations have historically posed threats to democratic processes. Nevertheless, the Supreme Court bench appeared reluctant to delve further into the matter, thereby dismissing the PIL without providing any commentary on its merits.

The case references a notable judgement in **Anoop Baranwal v. Union of India**, where the Supreme Court, by a 4:1 majority, concluded that the right to vote is a constitutional right. However, Justice Ajay Rastogi, the dissenting judge, argued that it should be considered a fundamental right.

## 2. Supreme Court Overturns Allahabad High Court Order for Violating Natural Justice Principles

In **SUNEETA DEVI V. AVINASH AND OTHERS**, the Supreme Court of India intervened to correct a significant legal misstep by the Allahabad High Court, which had earlier passed an order in a manner deemed in gross violation of the principles of natural justice. The apex court's bench, consisting of Justices BR Gavai and Sandeep Mehta, specifically pointed out that the High Court had acted in haste, neglecting to provide notice or an opportunity for the opposing parties to present their case.

### Background of the Dispute

The controversy originated from a request by villagers to the Land Management Committee (LMC) of the National Highways Authority of India (NHAI) for the construction of a school near the highway on a disputed plot of land. The proposal, sanctioned by the Sub-Divisional Officer (SDO), led to the initiation of construction by the NHAI. This move was contested by respondent no.1 through a writ petition in the High Court, claiming ownership of the land and asserting that the LMC and SDO had no authority to allocate the land for the school's construction. The High Court sided with respondent no.1, halting the construction project and recognizing his claim to the land.

### Supreme Court's Observations and Judgment

The Supreme Court's examination revealed that the High Court's order was marred by "patent illegality, perversity" and a clear disregard for the principles of natural justice, particularly due to the absence of formal notices and the rushed proceedings. Furthermore, the apex court criticised respondent no.1 for presenting false information in the writ petition, notably the claim that no previous petitions for similar relief had been filed.

With these considerations, the Supreme Court decided to quash the Allahabad High Court's order, thus allowing the construction of the school to proceed. This decision underscores the Supreme Court's commitment to ensuring that judicial processes adhere strictly to the principles of natural justice, providing a fair hearing to all parties involved.

## 3. Principle of Judicial Restraint in Administrative Decisions

The Supreme Court, in *State of Haryana v. Ashok Khemka*, reinforced the foundational principle of the Constitution that calls for judicial restraint in matters of administrative decisions, particularly when these decisions involve specialised expertise. The case in question revolved around an appeal against an order from the Punjab and Haryana High Court, which had set aside remarks and the overall grade given to senior IAS Officer Ashok Khemka in his Performance Appraisal Report (PAR) by Chief Minister ML Khattar.

### Background of the Case

The bench, consisting of Justices Vikram Nath and Satish Chandra Sharma, emphasised the judiciary's role in exercising restraint to avoid unnecessary interference with the executive's administrative decisions. This stance aligns with the court's previous positions, including rulings in cases such as *Caretel Infotech Ltd. v. Hindustan Petroleum Corpn. Ltd.*, and *State of Jharkhand v.*

Linde India Ltd., where it was clarified that constitutional courts should not substitute their views for those of administrative authorities without evidence of malfeasance or prejudice.

### Supreme Court's Observations

The Supreme Court observed that the evaluation process of an IAS officer, especially a senior one, requires a comprehensive understanding and expertise, which should ideally be left to the executive. The court noted that assessing an IAS officer's performance encompasses a variety of factors, including but not limited to, competency, adaptability, problem-solving and decision-making skills, as well as planning and strategy formulation capabilities. These assessments are made using a specialised evaluation matrix and are meant to be synthesised by a competent authority to determine an overall grade.

### Conclusion of the Court

In its conclusion, the Supreme Court found that the High Court had erred in intervening in the administrative process without the requisite domain expertise or understanding necessary for evaluating an IAS officer's performance. The court highlighted that the High Court's comparison of the grades and remarks given to Khemka by different authorities ventured into a specialised domain without the necessary expertise. Moreover, the court pointed out that the High Court's action was premature as the Accepting Authority had not yet rendered a decision on Khemka's representation.

## 4. Right to File Suit Upheld Against Contempt Claims

The Supreme Court, in *M/S SHAH ENTERPRISES THR. PADMABEN MANSUKHBHAI MODI VERSUS VAIJAYANTIBEN RANJITSINGH SAWANT & ORS*, reaffirmed the principle that initiating a lawsuit to assert one's legal rights cannot be considered contempt of court. This observation came during the hearing of an appeal against the dismissal of a contempt petition, spotlighting the judiciary's stance on the fundamental right to seek legal redress.

### Bench's Observation

The bench, comprising Justices B.R. Gavai, Rajesh Bindal, and Sandeep Mehta, categorically stated, "We find that, by no stretch of imagination, it could be said that the filing of the suit for asserting the rights of the plaintiffs/respondents could be said to be amounting to contempt of the Court." This statement underscores the court's recognition of the legal system as a means for individuals to assert and protect their rights.

### Case Background

The case involved a dispute over land initially given on lease to Bapusaheb Bajirao Sawant, which was later cancelled. The land was subsequently purchased by 67 individuals. Following Sawant's demise, his heirs filed a lawsuit claiming possession based on the original lease deed. A compromise agreement was reached and recorded as a consent decree by the Trial Judge, marking an apparent end to the dispute. However, the situation escalated when the appellant, who had acquired part of the disputed land, found the heirs filing another civil suit. Despite being notified of the consent decree, the heirs did not withdraw their lawsuit, prompting the appellant to file a contempt petition, which was dismissed by the Gujarat High Court.

### Supreme Court's Analysis

The Supreme Court pointed out the appellant's active participation in the legal proceedings he later sought to challenge. It also noted the distinct nature of the case from the precedent cited by the appellant, Delhi Development Authority vs. Skipper Construction, which involved a suit filed after judicial orders had attained finality, obstructing the course of justice. In contrast, the current case involved no such final adjudication, and the heirs were asserting what they claimed were ancestral rights over the land, disputing the legitimacy of the consent decree.

### 5. Arbitration Bid Denied by Delhi High Court Due to Lack of Agreement

In **Aerosource India Pvt Ltd. Vs Geetanjali Aviation Pvt Ltd.**, the Delhi High Court, under Justice Dinesh Kumar Sharma, dismissed a petition filed by Aerosource India Pvt Ltd., an aviation consulting firm, which sought the appointment of a sole arbitrator under Section 11(5) of the Arbitration and Conciliation Act, 1996. The case centred on a dispute with Geetanjali Aviation Pvt Ltd. regarding consultancy fees for facilitating the acquisition of an aircraft. Aerosource India based its claim on an invoice and WhatsApp chats, arguing for arbitration as a means of resolution.

However, Geetanjali Aviation contended that there was no formal arbitration agreement between them and that the invoice in question was actually raised against VSR Ventures Private Limited, not Geetanjali Aviation. The court's analysis focused on whether a valid arbitration agreement existed between the parties, as necessitated by the Arbitration and Conciliation Act, particularly after its 2015 amendment which emphasises minimal judicial intervention in arbitration processes unless there's a prima facie absence of an arbitration agreement.

After examining the submissions and evidence, the High Court concluded that there was no prima facie proof of an arbitration agreement between Aerosource and Geetanjali Aviation or between Aerosource and VSR Ventures Private Limited that could involve Geetanjali Aviation in the arbitration. Consequently, due to the lack of an agreement containing an arbitration clause, the court determined that the dispute was not subject to arbitration, leading to the dismissal of the petition.

### 6. Case of the Week

#### State of Tamil Nadu v. Nalini

The case of State of Tamil Nadu v. Nalini (1999 SCC) is pivotal in the annals of Indian legal history, chiefly due to its connection with the assassination of Rajiv Gandhi, a former Prime Minister of India. This case was extensively deliberated upon, especially regarding the death penalty, conspiracy, and the application of the Terrorists and Disruptive Activities (Prevention) Act (TADA) in terrorism and assassination cases.

Rajiv Gandhi was assassinated on May 21, 1991, by a suicide bomber from the Liberation Tigers of Tamil Eelam (LTTE), marking a significant event attributed to Gandhi's involvement in the Sri Lankan peacekeeping efforts. Nalini Sriharan, among others, was convicted for her involvement in this conspiracy. The trial, conducted under the stringent TADA, resulted in Nalini and three others being sentenced to death, a verdict that was sent to the Supreme Court for confirmation.

The Supreme Court's judgement in this case was remarkable for several reasons. It confirmed the death sentences of the accused but commuted Nalini's sentence to life imprisonment, considering her background and the nature of her involvement. This decision underscored the court's nuanced approach to the death penalty, emphasising the need for it to be applied in the "rarest of rare" cases and highlighting the importance of individual circumstances in capital punishment cases.

Moreover, the judgement meticulously examined the evidence against all accused, reaffirming their convictions based on substantial evidence. It also delved into legal and human rights issues, particularly concerning the use of TADA provisions and the rights of the accused, marking a significant moment in the discourse on terrorism, law, and human rights.

## 7. Repeated PYQ

**Q.: Discuss the powers of the Security Council for the maintenance of world peace and security. Has the Veto Power proved a hindrance in discharge of its duties by the Security Council ? Explain.**

The United Nations Security Council (UNSC) is one of the six principal organs of the United Nations and is charged with the maintenance of international peace and security as per the United Nations Charter. Its powers and duties are well-defined under Chapters VI and VII of the Charter, making it a pivotal body in addressing threats to peace and security. The UNSC has unique powers, including the imposition of sanctions, authorization of military action, and the establishment of peacekeeping operations. However, the veto power held by its five permanent members (P5) - the United States, the United Kingdom, France, Russia, and China - has been a contentious issue, often seen as a hindrance to its effectiveness.

### **Maintenance of World Peace and Security**

The UNSC has a broad mandate and a variety of tools at its disposal for the maintenance of international peace and security:

**Peaceful Settlement of Disputes (Chapter VI of the UN Charter):** The Council can investigate any dispute or situation that might lead to international friction. It recommends methods of adjustment or terms of settlement, utilising various mechanisms such as mediation, negotiation, arbitration, and judicial settlement.

**Action with Respect to Threats to Peace, Breaches of the Peace, and Acts of Aggression (Chapter VII):** When the Council determines the existence of a threat to peace, breach of peace, or act of aggression, it may take action to maintain or restore international peace and security. These actions can range from economic sanctions to international military intervention.

**Mandating Peacekeeping Operations:** The UNSC can establish and mandate peacekeeping operations to help countries navigate the difficult path from conflict to peace.

**Authorization of Military Action:** The Council can authorise military action to maintain or restore international peace and security, such as in Korea in 1950 and Libya in 2011.



**Imposition of Sanctions:** It can impose sanctions to coerce a change in action by a state or entity, including economic sanctions, arms embargoes, and travel bans.

### **Veto Power and Its Implications**

The veto power allows any of the P5 to block any substantive resolution, including those related to the maintenance of international peace and security. This power was intended to ensure the participation and agreement of the major powers in the enforcement of UNSC decisions. However, the veto has been a double-edged sword:

**Hindrance to Action:** The veto power has sometimes prevented the UNSC from acting against breaches of peace and security. Notable examples include the Syrian crisis, where multiple resolutions have been vetoed, paralysing the Council's ability to take decisive action.

**Political Paralysis:** The veto can lead to political paralysis within the Council, as the threat of a veto can deter the pursuit of resolutions that are perceived as unfavourable to any of the P5, regardless of the global consensus or the severity of a situation.

The use and threat of the veto have led to widespread criticism and calls for UNSC reform. Critics argue that the veto power is outdated and does not reflect the current geopolitical realities. Proposals for reform include limiting the use of the veto in cases of mass atrocities and expanding the membership of the Security Council to include other major states.

Despite these criticisms, it is also important to recognize instances where the UNSC has successfully utilised its powers to maintain or restore peace and security, such as its role in conflict resolution in the Balkans during the 1990s and its authorization of intervention in East Timor and Ivory Coast. The effectiveness of the UNSC, therefore, varies depending on the geopolitical context and the willingness of its members to cooperate for the greater good.

While the Security Council has significant powers for the maintenance of world peace and security, the veto power of its permanent members has at times hindered its ability to discharge these duties effectively. The veto has contributed to inaction in the face of severe crises and has sparked debates on the need for UNSC reform. Balancing the safeguarding of national interests of the P5 with the global need for decisive action in maintaining international peace and security remains a complex challenge. The future effectiveness of the UNSC in fulfilling its mandate will largely depend on how it navigates these challenges and adapts to the evolving global political landscape.