

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 25th - 31st March 2024**

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## 1. Upholding Enforcement of Foreign Arbitral Awards: A Judicial Mandate

In a recent ruling by a Division bench of Justices Hrishikesh Roy and Prashant Kumar Mishra, the Indian Supreme Court reinforced the principle of minimal judicial intervention in foreign arbitral awards. The case, involving Avitel Post Studioz Limited (appellant) and HSBC PI Holdings (Mauritius) Limited (respondent), centred on the enforcement of a Singapore-seated arbitration award worth US\$ 60 million.

### Background of the Case

The dispute stemmed from a share subscription agreement between the parties, which included an arbitration clause designating the Singapore International Arbitration Centre (SIAC) as the dispute resolution forum. Subsequently, the respondent initiated arbitration proceedings, alleging fraudulent misrepresentations by the appellants. A final award was issued in favour of the respondent, compelling the appellants to pay damages. Following several legal battles, the present appeal challenged the enforcement of the arbitral award, citing arbitral bias and violation of public policy.

### Key Legal Observations

The Supreme Court emphasised the principle of minimal judicial intervention in foreign arbitral awards, citing the precedent of *Vijay Karia v. Prysman Cavi E. Sistemi SRL*. Furthermore, the Court highlighted the limited scope of challenging such awards, particularly in cases where they have been enforced by a judgement of a High Court.

Regarding public policy considerations, the Court referenced the *Shri Lal Mahal Ltd. v. Progetto Grano SpA* case, emphasising the narrow grounds available to resist the enforcement of foreign awards. Additionally, the Court discussed international standards for defining "public policy" in arbitration, focusing on fundamental principles of justice, morality, and state interests.

**Party Autonomy and Choice of Seat**

Highlighting the parties' explicit selection of Singapore as the arbitration seat, the Court highlighted the significance of party autonomy in arbitration agreements. It noted that the chosen seat court holds exclusive jurisdiction over challenges related to arbitrator jurisdiction or bias, aligning with the New York Convention's principles.

**Timely Challenges and Enforcement**

The Court emphasised the importance of timely challenges to arbitral awards and discouraged strategic delays in the enforcement process. It cited the Shipowner (Netherlands) v. Cattle and Meat Dealer (Germany) case, which mandates raising bias objections in the country of the award's origin.

**2. Supreme Court's Caution on Pre-trial Injunctions in Defamation Cases**

The Supreme Court, in Bloomberg Television Production Services India Pvt Ltd and others v. Zee Entertainment Enterprises Ltd, emphasised the need for caution when granting pretrial injunctions against media publications in defamation suits. The bench, comprising Chief Justice of India DY Chandrachud, Justices JB Pardiwala, and Manoj Misra, set aside an interim injunction ordering Bloomberg to remove an article concerning Zee Enterprises Ltd.

**Balancing Rights: Free Speech vs. Reputation**

In defamation suits involving media platforms or journalists, the Court highlighted the importance of balancing the right to free speech with the right to reputation and privacy. It cautioned against granting pretrial injunctions without careful consideration, as such actions could stifle public debate and the media's role in informing the public.

**Significance of Free Speech**

The Court underlined the constitutional mandate to protect journalistic expression, emphasising that injunctions against media publications should only be granted in exceptional cases. It warned against the cavalier grant of ex-parte injunctions, stressing the need to establish malicious intent or palpable falsehood before restricting publication.

**SLAPP Suits and Prolonged Litigation**

Addressing the phenomenon of Strategic Litigation against Public Participation (SLAPP) suits, the Court highlighted the risk of using prolonged litigation to suppress free speech and public participation. It cautioned against granting interim injunctions that could act as a "death sentence" to the material sought to be published.

**Judicial Oversight**

The Court emphasised the role of appellate courts in scrutinising the grant of interim relief, particularly in defamation cases involving media entities. It stated that appellate courts must intervene if interim injunctions are granted arbitrarily or if settled principles of law are ignored.

### 3. Supreme Court Clarifies Ingredients of Cheating Offence

The Supreme Court, in *A.M. MOHAN v. THE STATE REP BY SHO.*, clarified the essential elements required to establish the offence of cheating under Section 420 of the Indian Penal Code (IPC). The three-judge Bench comprising Justices B.R Gavai, Rajesh Bindal, and Sandeep Mehta outlined the criteria for invoking this provision.

#### Key Ingredients of Cheating

The Court emphasised that to establish the offence of cheating, it must be shown that:

1. There was deception of a person,
2. The person was fraudulently or dishonestly induced to deliver property to another person, and
3. The accused had a dishonest intention at the time of making the inducement.

#### Case Background

The case pertained to allegations of cheating where the complainant transferred a sum of money to the appellant at the insistence of another accused. While the High Court declined to quash the FIR against the appellant, the Supreme Court considered the matter on appeal.

#### Court's Observations

The Supreme Court expressed concern about converting civil disputes into criminal cases and relied on precedent to elucidate the elements of cheating. It noted that the allegations of inducement were directed only against certain accused individuals and not the present appellant. Additionally, the appellant did not engage directly with the complainant in the transaction.

#### Absence of Dishonest Inducement

Observing that dishonest inducement is essential for the offence of cheating, the Court concluded that the FIR did not disclose such elements against the appellant. Even when considering the FIR at face value, the Court found the ingredients of cheating were not met concerning the appellant.

### 4. PM Modi's Special Armoured Vehicles

The National Green Tribunal (NGT) principal bench has dismissed a plea filed by the Special Protection Group (SPG) responsible for the security of Prime Minister Narendra Modi. The plea sought an extension of the registration period for three Specialised Armoured Vehicles (SPV).

The NGT rejected the plea citing the Supreme Court's directive in *M.C. Mehta v. Union of India*, which prohibits diesel vehicles older than 10 years from plying in the National Capital Region (NCR) as per NGT guidelines. The SPG's plea was based on the fact that these diesel vehicles' registration would expire in December 2024, after ten years since their initial registration.

The Tribunal acknowledged the unique nature of these special-purpose vehicles, primarily used for the security of the Prime Minister. However, it emphasised that the Supreme Court's 2018 directive

prohibits the operation of diesel vehicles older than 10 years in the NCR, irrespective of their purpose or rarity.

The SPG argued that these armoured vehicles were integral to their technical logistics and had been sparingly used for specific tactical purposes, covering limited distances over the past nine years. Despite approaching the Transport Department for an extension of registration, the SPG's request was declined based on the NGT and Supreme Court orders.

Referring to its earlier directions and the Supreme Court's mandate, the NGT refused to grant relief to the SPG. It underscored that no directive contrary to the Supreme Court's order could be issued. Therefore, the NGT rejected the SPG's application to extend the registration period of the armoured vehicles.

## **5. Environment and Trade: Implications of the EU Deforestation Regulation**

The relationship between environmental concerns and international trade is gaining traction globally, with significant implications for trade regulations and practices. The European Union's (EU) recent enactment of the Deforestation Regulation (EUDR) serves as a prime example of how environmental policies can intersect with trade dynamics and potentially spark international disputes.

### **WTO Framework and Environmental Exceptions**

The World Trade Organization (WTO) framework allows for environmental requirements to be invoked as exceptions to trade rules, provided they are not arbitrary or discriminatory. However, the interpretation of these exceptions remains ambiguous, leading to concerns about protectionist motives disguised as environmental measures.

### **EU's Deforestation Regulation**

The EUDR, enacted in 2023, prohibits the import and sale of agricultural products linked to deforestation. This regulation aims to safeguard forests, biodiversity, and combat climate change. Notably, Brazil, a major exporter to the EU, stands to be significantly affected by this regulation, with approximately 62% of its agribusiness exports potentially impacted.

### **Challenges and Controversies**

The EUDR's criteria for defining "deforestation-free" products have raised questions, particularly regarding its disregard for the legality of deforestation under national laws. This unilateral imposition by the EU challenges the sovereignty of exporting nations, potentially leading to trade conflicts.

### **Potential Trade Disputes and WTO Review**

The EUDR's unilateral imposition and subjective risk analysis criteria may lead to trade disputes, especially if they are perceived as arbitrary or discriminatory. This could prompt a reevaluation of WTO rules and interpretations concerning environmental exceptions in trade.

As environmental concerns continue to shape trade policies, there is a pressing need for clarity and coherence in international regulations. The EU's Deforestation Regulation serves as a litmus test for the delicate balance between environmental protection and trade liberalisation, highlighting the importance of harmonising global trade practices with sustainable development goals.

## 6. Case of the Week

### *Bourhill v. Young*

The incident that led to this case occurred when a fishwife, Mrs. Bourhill, disembarked from a tram in Edinburgh. She was 8 months pregnant at the time. After she left the tram and while she was on the pavement, a motorcycle driven by Mr. Young collided with a car some distance away from her. Mrs. Bourhill did not witness the accident itself but heard the noise of the collision. After the accident, she walked closer to the scene, where she saw blood on the road. This sight caused her to suffer shock, resulting in emotional and psychological distress, and she claimed that this distress led to the stillbirth of her child.

#### **Legal Issue**

The central legal issue in *Bourhill v. Young* was whether Mr. Young (or his estate, as he died in the accident) owed a duty of care to Mrs. Bourhill. To establish negligence, it was necessary to determine if the harm to Mrs. Bourhill was a foreseeable consequence of Mr. Young's actions, thereby obligating him to a duty of care towards her.

#### **Judgment**

The House of Lords held that Mr. Young did not owe a duty of care to Mrs. Bourhill. The key reasons for this judgement were:

**Foreseeability:** For a duty of care to exist, the harm must be a reasonably foreseeable result of the defendant's actions. The court found that it was not foreseeable to Mr. Young that his riding could cause psychiatric injury to a person not in the vicinity of the accident and who did not witness the accident.

**Proximity:** The concept of proximity was considered in both a physical and relational sense. The court concluded that Mrs. Bourhill was neither in the zone of physical danger nor had a relationship with Mr. Young that would foreseeably put her at risk of psychiatric harm.

**Policy Considerations:** The court also took into account policy reasons for restricting the scope of duty of care, to avoid imposing an unreasonable burden on individuals' actions and the legal system.

The significance of *Bourhill v. Young* lies in its establishment of the principles of foreseeability and proximity as key elements in determining the existence of a duty of care in negligence claims. The case is a cornerstone in the development of the law of negligence, especially concerning claims for psychiatric injury.



## 7. Repeated PYQ

**Q.:In matters such as enforcement of social, economic, cultural or political rights or civil liberties or gender concerns, courts in India have been inclined to apply relaxed rules of standing or litigational competence rather than strict rules of locus. Discuss.**

In the landscape of Indian jurisprudence, the judiciary has shown a progressive inclination towards embracing a more relaxed approach to the rules of standing, also known as locus standi, especially when adjudicating matters related to the enforcement of social, economic, cultural, or political rights, civil liberties, or gender concerns. This transformative approach signifies a shift from traditional to more liberal and proactive judicial activism, aiming to ensure justice is accessible and inclusive, thereby strengthening the fabric of democracy and upholding the ethos of the Constitution of India.

### Evolution of Locus Standi in India

Historically, the principle of locus standi required a person to be directly affected by the issue at hand to file a case in court. This traditional view was restrictive and often impeded the path to justice, particularly in public interest cases where the aggrieved party might not have the means or the capacity to approach the courts.

The landmark case of *S.P. Gupta vs. Union of India* (1981) marked a significant turning point in this regard. The Supreme Court of India, recognizing the need to make justice more accessible, adopted a liberal approach towards locus standi, thereby giving birth to the concept of Public Interest Litigation (PIL). This case paved the way for any public-spirited individual or organisation to approach the courts seeking relief for a broader public cause, especially in cases involving the violation of constitutional rights and freedoms.

### Judicial Activism in Upholding Civil Liberties and Rights

The Indian judiciary, through its liberal interpretation of Article 32 (right to constitutional remedies) and Article 226 (power of High Courts to issue certain writs), has expanded the scope of fundamental rights. Courts have increasingly entertained PILs concerning environmental issues, human rights violations, consumer protection, and corruption, among others. The case of *M.C. Mehta vs. Union of India* is a series of landmark judgments focusing on environmental protection through the instrument of PIL, reflecting the court's active role in addressing public grievances that impact the social and economic rights of the citizens.

### Gender Justice and Relaxed Locus Standi

In matters of gender justice, the Indian judiciary has shown commendable flexibility in addressing the concerns of women and other marginalised genders. The Vishaka Guidelines laid down in *Vishaka and others vs. State of Rajasthan* (1997) is a prime example of judicial activism where the Supreme Court issued guidelines to prevent sexual harassment at the workplace in the absence of legislation. This not only underscored the court's role in protecting women's rights but also highlighted its willingness to intervene in socio-legal issues affecting vulnerable sections of society.

**Debate Around Judicial Overreach**

While the relaxed approach to locus standi has been widely appreciated for making the judiciary more accessible and responsive to the needs of society, it has also sparked debates around judicial overreach. Critics argue that by taking an overly active role, the judiciary sometimes encroaches upon the domains of the legislative and executive, thus blurring the lines of separation of powers as outlined in the Constitution.

The relaxed rules of locus standi adopted by the Indian courts represent a pivotal shift towards ensuring that justice is not just a theoretical concept but a tangible reality accessible to all, especially the marginalised and underprivileged sections of society. By enabling a wider array of individuals and organisations to bring issues of public concern to the forefront, the judiciary has played an instrumental role in enforcing social, economic, cultural, and political rights, as well as in advancing civil liberties and gender concerns.

This progressive approach, while occasionally contentious, has undeniably contributed to the deepening of democracy in India. It reflects a judicial philosophy that prioritises the essence of justice over procedural technicalities, embodying the spirit of the Constitution in its quest to secure to all its citizens the promises of equality, freedom, justice, and dignity.

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*De Facto IAS*