

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 4th March - 10th March 2024**

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## 1. Independent Kurdistan: Legal and International Perspectives

The quest for Kurdish independence weaves through the intricate fabric of international law and Middle Eastern geopolitics. This pursuit embodies the Kurdish people's desire for a state that recognizes their unique identity, culture, and history. Despite being one of the world's largest ethnic groups without a nation, Kurds have faced numerous obstacles in their quest for autonomy, largely due to the complex interplay of global politics and shifting alliances. At the heart of this struggle is the tension between the right to self-determination and the principle of territorial integrity as enshrined in international law.

The Charter of the United Nations (1945) sets the foundation, emphasising state sovereignty and territorial integrity, yet it also upholds the right to self-determination, allowing peoples to define their political status and pursue development. Similarly, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both from 1966, reinforce this right, offering a legal bedrock for Kurdish aspirations. Additionally, the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the Vienna Declaration and Programme of Action (1993) highlight the universality of self-determination and the international consensus on human rights, respectively.

The Kurdish drive for independence is not just a political movement but a reflection of their enduring struggle against oppression and their quest for recognition. However, the path to achieving a sovereign Kurdish state is fraught with challenges, notably from the existing states governing Kurdish-populated areas. The principle of territorial integrity complicates matters, as it would require redrawing recognized borders, stirring geopolitical tensions.

The international community's cautious stance on Kurdish independence reflects broader concerns about regional stability and the potential precedent it might set. While there is sympathy for Kurdish rights and occasional support for greater autonomy within existing states, outright backing for full independence is scarce.

This journey towards an independent Kurdistan intersects with deep legal, political, and ethical questions. It challenges the international community to reconcile the right to self-determination with the principles of state sovereignty and territorial integrity. Kurdish aspirations thus highlight the ongoing global struggle for self-determination, underscoring the need for a nuanced and principled approach that respects both individual rights and international norms. As such, the Kurdish quest remains a poignant testament to the complexities of achieving statehood in today's interconnected world, requiring a delicate balance of rights, responsibilities, and realpolitik.

## 2. Supreme Court Converts Murder Conviction to Culpable Homicide

In ***DATTATRAYA VERSUS THE STATE OF MAHARASHTRA***, the Supreme Court of India made a significant decision regarding a case involving the tragic death of a pregnant woman at the hands of her husband. The husband was initially convicted of murder under Section 300 of the Indian Penal Code (IPC) for setting fire to his wife after pouring kerosene on her. However, the Supreme Court, comprising Justices Sudhanshu Dhulia and PB Varale, converted the conviction to the offence of culpable homicide not amounting to murder, punishable under Part-II of Section 304 IPC.

### Court's Rationale and Observations

The bench elucidated that when an accused's action is not premeditated but arises from a sudden fight and quarrel in the heat of passion, it falls under culpable homicide not amounting to murder. The court noted that in the case at hand, a sudden altercation occurred between the husband and wife, resulting in the fatal act. Despite the accused's awareness that his actions could lead to death, the court determined there was no intention to kill his wife.

### Legal Precedent and Previous Judgments

Referring to the fourth exception under Section 300 IPC, which exempts acts committed in the heat of passion during a sudden quarrel from being categorised as murder, the Supreme Court observed that the husband's actions aligned with this exception. The court's decision was also influenced by a previous judgement, *Kalu Ram v. State of Rajasthan*, where similar circumstances led to a conversion of conviction from murder to culpable homicide not amounting to murder.

In modifying the findings of the trial court and High Court, the Supreme Court emphasised that the accused had already served more than 10 years of incarceration. Consequently, the court ordered his immediate release unless required in connection with another offence.

## 3. Supreme Court Clarifies Application of Article 20(1) in Sentencing

In ***M/S A.K. SARKAR & CO. & ANR. VERSUS THE STATE OF WEST BENGAL & ORS.***, the Supreme Court provided crucial insights into the application of Article 20(1) of the Indian Constitution concerning retrospective operation of criminal laws. The Court observed that Article 20(1) does not restrict the courts from imposing a lesser punishment based on a new law enacted after the commission of the offence.

Article 20(1) enshrines the principle that criminal laws cannot be applied retrospectively to subject an individual to punishment or a higher penalty based on a law that was not in force at the time of

the offence. However, the Court clarified that this provision does not prevent courts from imposing a lesser punishment prescribed by a new law for the same offence.

In a judgement authored by Justice Sudhanshu Dhulia, the Court addressed whether the sentence imposed on the appellants under the Prevention of Food Adulteration Act, 1954 ("Old Act") could be modified following the enactment of the Food Safety and Standards Act, 2006 ("New Act").

The bench, referring to the case of *T. Barai v. Henry Ah Hoe*, emphasised that beneficial amendments can be applied retroactively, even to cases pending in courts where such provisions did not exist at the time of the offence. Consequently, the Supreme Court granted the benefit of the lesser sentence to the accused/appellants by converting the sentence of imprisonment to a fine.

The case involved the appellants' conviction under the Prevention of Food Adulteration Act, 1954, for failing to label the details of the manufacturer and the manufacturing date of a food item.

The Trial Court convicted the appellants, with appellant no. 2, a partner of the food company, sentenced to imprisonment and a fine. The High Court upheld the conviction but reduced the sentence of appellant no. 2 and maintained the fine.

Upon appeal to the Supreme Court, the appellants argued against the applicability of certain provisions under the Prevention of Food Adulteration Act, 1954, contending they were not related to misbranding. However, the Court rejected this contention, affirming the findings of the lower courts.

In light of its observations and the principle of converting the appellant's sentence, the Supreme Court reduced appellant no. 2's sentence to a fine. The appeal was partly allowed, bringing clarity to the application of Article 20(1) in sentencing.

#### **4. Extension of Arbitral Tribunal's Mandate Despite Award Publication**

The case titled "*National Skill Development Corporation Vs Best First Step Education Private Limited & Ors.*" involved a Loan Agreement where the petitioner acted as the lender, with respondent no. 1 as the principal borrower, and respondent nos. 2 to 5 as guarantors. Respondent no. 6 allegedly provided other undertakings. All parties were involved in arbitration proceedings under the Indian Council of Arbitration (ICA). The petitioner initiated arbitration, and an arbitrator was appointed by the ICA. During proceedings, respondent no. 6 was declared ex-parte, and counsel for respondent nos. 1 to 5 sought to withdraw their vakalatnama.

The petitioner approached the Delhi High Court under Section 29A of the Arbitration and Conciliation Act, 1996, before the final award was published. The central question was whether the mandate of the Tribunal could be extended after the award was made.

#### **Observations by the High Court:**

The High Court referred to previous cases, including *Harkirat Singh Sodhi v. Oram Foods (P) Ltd.* and *Powergrid Corpn. of India Ltd. v. SPML Infra Ltd.*, for precedent. It noted that a petition filed

before the award but after the expiration of the Arbitrator's mandate is maintainable, while one filed after the award is delivered and proceedings for setting aside commence is non-maintainable.

Drawing from its own precedent in *ATC Telecom Infrastructure (P) Ltd. v. BSNL*, the Court affirmed that a Section 29A petition can be filed even after the mandate has expired. Considering these principles, the petition in the present case was allowed.

## 5. Air India Liable for Delayed Baggage

In a recent case before the District Consumer Disputes Redressal Commission-VI, New Delhi, the complainants booked tickets with Air India Limited via [www.makemytrip.com](http://www.makemytrip.com) for their journey from Delhi to New York and return. However, upon reaching Newark Liberty International Airport, they faced a significant setback - their luggage did not arrive. Despite persistent inquiries and a delay in providing a Property Irregularity Report, Air India failed to resolve the issue promptly, leaving the complainants in a state of distress.

### **Brief Facts:**

The complainants, having checked in four bags at Indira Gandhi International Airport, experienced a prolonged wait for their luggage upon arrival at Newark Liberty International Airport. Despite being assured that their baggage would arrive within six days, they were left stranded without their belongings for an extended period. This forced them to incur additional expenses and inconveniences, including purchasing clothes, medicines, and arranging transportation to collect their bags.

### **Observations by the District Commission:**

The District Commission acknowledged the efforts made by the complainants to trace their luggage, including numerous calls made to Air India's officials. It rejected Air India's argument that the complainants suffered no mental or monetary loss, emphasising that international travellers typically carry essential items like clothes and medicines. Consequently, the District Commission held Air India accountable for deficiency in services.

### **Conclusion and Compensation:**

In light of the complainants' ordeal, the District Commission ordered Air India to compensate them with Rs. 2,00,000/- for the mental agony, harassment, and financial losses incurred due to the delayed baggage. This compensation covered expenses related to purchasing clothes, medicines, and other miscellaneous costs. Additionally, Air India was directed to pay Rs. 25,000/- towards the litigation costs borne by the complainants.

## 6. Case of the Week

### ***Association for Democratic Reforms & Anr v. Union of India & Anr. (2024)***

The Supreme Court of India's landmark judgement on February 15, 2024, striking down the Electoral Bonds Scheme (EBS), represents a pivotal moment in the pursuit of transparent political funding in India. Instituted under the Finance Ministry in 2018, the EBS was introduced to mitigate the flow of unaccounted money into politics by enabling anonymous yet traceable donations

through electoral bonds. Despite its innovative approach, the scheme sparked debate over its implications for transparency and donor influence in political funding.

The scheme allowed individuals and corporations to anonymously donate to political parties through bonds, purchasable from authorised banks. Eligibility for receiving these funds was restricted to parties registered under the Representation of the People Act, which had secured at least one percent of votes in recent elections. This method aimed to curb black money in politics while maintaining donor anonymity to protect contributors from potential backlash. However, concerns arose regarding the anonymity feature, fearing it might cloak the influence of affluent donors and corporations over political entities.

Critics and proponents alike debated the scheme's merits and flaws. Advocates highlighted its potential to clean political funding by shifting from cash transactions to a regulated, digital framework. Conversely, detractors argued it might exacerbate the opacity in political donations, allowing for unchecked corporate influence without adequate public scrutiny.

The Supreme Court, in a significant ruling, declared the EBS unconstitutional, underscoring the right to information as a fundamental aspect of the democratic process. The judgement, authored by Chief Justice DY Chandrachud and comprising Justices Sanjiv Khanna, BR Gavai, JB Pardiwala, and Manoj Misra, emphasised transparency in political contributions. It mandated the Election Commission to disclose details of political contributions through electoral bonds by March 2024, marking a step towards greater transparency in political financing.

The Court's decision hinged on balancing the right to informational privacy with the public's right to information. It referenced previous landmark cases, evolving from a public interest model to a nuanced proportionality test. This test scrutinises whether any infringement of a fundamental right is justifiable, aiming to ensure that limitations are necessary, suitable, and the least restrictive means to achieve legitimate objectives.

## 7. Repeated PYQ

**Q.:- Explain the significance of audi alteram partem. What are the cases or circumstances in which the aforesaid principle of natural justice can be excluded?**

The principle of "Audi Alteram Partem" is a foundational element in the administration of justice, emphasising fairness and due process in legal and administrative proceedings. This principle, which translates to "let the other side be heard," is essential for ensuring that all parties have the opportunity to present their case, respond to allegations, and contribute to a transparent decision-making process. It addresses the need for decisions to be made based on a thorough examination of all relevant information, thereby minimising biases and arbitrary actions. By mandating that each party is given notice of the proceedings, an opportunity to present evidence, and the ability to challenge opposing evidence, this principle upholds the ideals of fairness, equity, and rationality in the legal process.

### Circumstances for Exclusion of Audi Alteram Partem



While the principle of Audi Alteram Partem is vital for ensuring justice and fairness, there are specific circumstances under which its application can be justifiably excluded. These exceptions are recognized to balance the need for procedural fairness with practical necessities, emergencies, public interest, and the impracticability of applying the principle in certain situations.

### **Doctrine of Necessity and Absolute Necessity**

The doctrine of necessity allows for the exclusion of Audi Alteram Partem in extraordinary circumstances where following the principle would impede the resolution of urgent issues. For example, in **Ashok Kumar Yadav and others v. State of Haryana and others**, the Supreme Court allowed members of the Public Service Commission with potential conflicts of interest to participate in the selection process when excluding them was impractical, highlighting the application of the doctrine of necessity in ensuring the continuation of essential administrative functions.

### **Statutory Exceptions**

Legislatures may enact laws that specifically limit the application of Audi Alteram Partem to streamline processes or address matters of national security or public safety. An instance of this is found in **Charan Lal Sahu v. Union of India**, where the Supreme Court recognized statutory provisions under the Bhopal Gas Disaster (Processing of Claims) Act, 1985, that allowed the government to represent victims, acknowledging the necessity of such an exception for the effective resolution of widespread harm.

### **Emergency Situations**

In emergencies or situations requiring immediate action to protect national security or public order, the principle may be suspended. The case of **Mohinder Singh Gill v. Chief Election Commissioner** illustrates this, where the Supreme Court upheld the decision to order re-elections without a hearing, recognizing the need for swift action in response to electoral disruptions caused by violence.

### **Non-Infringement of Individual Rights**

When an individual's rights are not directly impacted, the principles of Audi Alteram Partem may not apply. This is aligned with the maxim "Ubi Jus Ibi Remedy," implying that procedural fairness is contingent upon the existence of a substantive right.

### **Public Interest**

Public interest can override the application of Audi Alteram Partem, especially when the collective welfare is at stake. The Supreme Court's decision in **BALCO Employees Union v. Union of India** emphasised that principles of natural justice, including Audi Alteram Partem, might not apply in decisions where public interest is significantly involved, provided the government's actions are not arbitrary or illegal.

### **Impractical Situations**

When it is impractical to hear from all parties involved due to time, resource, or logistical constraints, the principle may be set aside. **Bihar School Examination Board v. Subhas Chandra Sinha** serves as a pertinent example where the Supreme Court recognized the impracticality of hearing from all students accused of mass copying in exams, underscoring the need for practicality in the application of procedural fairness.

