

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 11th Dec- 17th Dec 2023**

1. Government can't be directed to make a policy.....	1
2. Unstamped agreement is also enforceable In India.....	2
3. Dark Pattern and Consumer protection.....	3
4. SC judgement on article 370.....	4
5. Can film review be banned in light of article 19(1)(a) of Constitution.....	6
6. Case of the Week.....	7
7. Repeated PYQ.....	7

[New Foundation Batch Starting 5th Jan 2024: Enquire Now !](#)

## 1. Government can't be directed to make a policy.

In the case "**Union of India V. AIR Commodore NK Sharma**, Civil Appeal No. 14524 of 2015" , the Supreme Court of India delivered a significant judgment concerning the scope and limits of the powers of tribunals in relation to policy-making by the government. The bench, comprising Justice Abhay S. Oka and Justice Sanjay Karol, addressed the issue of whether the Armed Forces Tribunal (AFT) could direct the government to frame a policy for filling the post of Judge Advocate General (JAG) (Air).

### Brief facts

;The backdrop of the case involved the respondent, serving in the JAG department and appointed as JAG (Air) in 2010 and later promoted to Air Commodore in 2011. The post of JAG (Air) was upgraded to the rank of Air Vice Marshal (AVM) in 2012, and the respondent, after a series of appointments and superannuations, found himself not considered for promotion to the upgraded rank. He approached the AFT against the government for not having a policy for a separate promotion board for legal vacancies. The AFT directed the formation of such a policy and continuation of the respondent in service until then.

### Decision

The Supreme Court, in setting aside the AFT's direction, emphasised the principle that policy-making is not within the judicial domain, including tribunals like the AFT. The Court noted that although tribunals have the jurisdiction over disputes related to promotions and vacancies, they lack the authority to direct the government to frame policies in a particular manner. The Court reiterated that under Section 14(4) of the Armed Forces Tribunal Act, 2007, the AFT has powers akin to a civil court for adjudication of disputes, but it does not possess the powers exercised by the Supreme Court or a High Court under Articles 226 and 227 of the Constitution.

- The Supreme Court pointed out that the respondent's challenge to the non-formation of a policy for filling up the JAG (Air) vacancy was not valid, as he had participated in the Promotion Board of 2015 and challenged the result only after being declared unsuccessful. The Court also highlighted that the Tribunal's direction allowing the respondent to continue in service past the age of superannuation was baseless, as the determination of the age of superannuation falls within the executive policy domain.

Ultimately, the Supreme Court quashed the AFT's order, reaffirming the separation of powers and underscoring that tribunals cannot direct the government to frame specific policies.

## 2. Unstamped agreement is also enforceable In India

In a landmark ruling, the Supreme Court of India clarified the legal position regarding unstamped or inadequately stamped agreements, particularly focusing on the enforceability of arbitration clauses within such documents. This decision, rendered on December 13, 2023, overturned a previous judgment by a 5-judge bench in the case of **M/s. N.N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Ltd. And Ors.**

The bench, led by Chief Justice of India DY Chandrachud, included Justices Sanjay Kishan Kaul, Sanjiv Khanna, B R Gavai, Surya Kant, JB Pardiwala, and Manoj Misra. They unanimously held that the lack of stamp duty does not render an agreement void or unenforceable, but only inadmissible in evidence. This ruling brings significant clarity to the distinction between the admissibility of a document in evidence and its enforceability in law.

### Arbitration Act

The Court emphasized that an agreement could be void and unenforceable but still admissible in evidence, aligning with the provision under Section 2(g) of the Contract Act. This section states that an agreement not enforceable by law is considered void. Thus, an agreement may be valid but inadmissible in evidence if it lacks proper stamping. The Court highlighted the difference between the void nature of an agreement concerning its enforceability and the concept of inadmissibility, which pertains to whether a court may consider or rely upon it in adjudication.

### Decision

Central to this ruling is the interpretation of Section 35 of the Stamp Act. This section clearly states that an instrument chargeable with duty shall not be admitted in evidence if it lacks proper stamping.

- The Court elaborated that non-payment or inadequate payment of stamp duty does not invalidate the instrument but only makes it inadmissible. This distinction is pivotal as it underscores that the Stamp Act does not declare instruments without proper stamping as void. Rather, it treats the lack of stamp duty as a curable defect, offering a structured procedure for rectifying this deficiency.
- Furthermore, the Court clarified that Section 2(j) is not applicable when an instrument is inadmissible under Section 35 of the Stamp Act, meaning that an unstamped agreement is

not rendered unenforceable. Instead, it implies that the agreement remains valid but cannot be admitted as evidence until the stamp duty defect is cured.

### **Significance**

This judgement is significant as it rectifies the earlier stance on unstamped arbitration agreements and realigns the legal understanding of the consequences of non-stamping or insufficient stamping of agreements. It ensures that arbitration clauses in such agreements remain enforceable, subject to the rectification of the stamp duty defect. This ruling has wide-ranging implications for commercial transactions and dispute resolution, ensuring that technicalities related to stamp duty do not impede the enforceability of arbitration agreements.

### **3. Dark Pattern and Consumer protection**

The Central Consumer Protection Authority (CCPA) of India's recent notification of guidelines aimed at preventing and regulating dark patterns marks a significant stride in consumer protection, particularly in the digital domain. Dark patterns are deceptive techniques used to manipulate consumer choices, often without their awareness, leading to compromised decisional autonomy and privacy. These guidelines are a response to the growing reliance on e-commerce platforms and are designed to safeguard consumer interests online.

#### **Understanding Dark Patterns and Their Unfairness**

Dark patterns are manipulative practices that impair consumer autonomy, often appearing innocuous but effectively exploiting consumer interests. These techniques are deemed unfair trade practices under the Consumer Protection Act, 2019 (CPA), which provides a redressal mechanism for such practices. The CCPA's issuance of these guidelines aligns with its mandate under Section 18 (2) of the CPA to prevent unfair trade practices.

#### **The Indian Legal Framework Against Dark Patterns**

The guidelines outline 13 specific dark patterns, including "False Urgency," "Basket Sneaking," "Confirm shaming," "Subscription trap," "Drip Pricing," and "Nagging." They apply to all sellers, advertisers, and platforms offering goods and services in India, including foreign businesses targeting Indian consumers. The guidelines empower consumers to report the use of dark patterns through the National Consumer Helpline.

These guidelines complement existing consumer protection laws, such as the Consumer Protection (E-Commerce) Rules, 2020, and other measures like the Guidelines for Prevention of Misleading Advertisements (2022) and industry standards set by the Advertising Standards Council of India.

#### **Dark Patterns and Privacy**

Dark patterns often involve collecting excessive personal data without genuine consent, contravening the principles of free and informed consent critical in the data protection regime. India's Digital Personal Data Protection Act, 2023, requires clear, unambiguous consent for data processing, emphasizing the right to withdraw consent easily.

### Global Stance on Dark Patterns

Internationally, various legislations address the challenges posed by dark patterns. In the USA, the California Consumer Privacy Rights Act, 2020, and actions by the Federal Trade Commission against companies like Amazon Inc. reflect efforts to combat deceptive consent practices. The European Union, through GDPR and other acts like the Digital Services Act and Unfair Commercial Practices Directive, regulates dark patterns within existing frameworks.

### Potential Issues with the Guidelines

While these guidelines are a positive step towards consumer protection, they also raise concerns. The Asia Internet Coalition suggests a self-regulatory framework might be more suitable, considering the dynamic nature of online advertising. The guidelines could potentially overlap with existing regulations, creating an additional compliance burden. Moreover, the inclusion of intermediaries in these regulations might conflict with the safe harbor protections granted under Section 70 of the IT Act.

### Conclusion

The CCPA's guidelines on dark patterns are a crucial development in protecting consumers in the digital age. They make stakeholders more accountable and enhance consumer awareness. However, it is vital to balance the need for consumer protection with the creative freedom of advertisers and the practicalities of the digital economy. A careful approach is needed to distinguish between persuasive and manipulative practices, ensuring that the guidelines do not inadvertently stifle innovation or burden businesses unduly.

## 4. SC judgement on article 370

The Supreme Court of India's judgment on the abrogation of Jammu and Kashmir's special status under Article 370 has raised significant concerns about its implications for federalism, a basic feature of the Indian Constitution. This ruling is noteworthy for its interpretation of the powers vested in the Union Government and Parliament, particularly under conditions of President's rule.

Key Aspects of the Judgment:

**1. Unilateral State Alteration Under President's Rule:** The Court upheld the power of the Union Government to make irreversible and fundamental changes to a state's polity during President's

rule. This stance is troubling for federalism because it implies that the Union can unilaterally alter the status of a state without the need for state-level political consensus or legislative input.

**2. Downgrading a State to a Union Territory:** The Court avoided deciding whether Parliament can downgrade a state to a union territory. The avoidance was based on the Union Government's non-binding assurance that Jammu and Kashmir's statehood would be restored. This raises questions about the judiciary's role in addressing core constitutional issues and sets a concerning precedent.

**3. Authority to Carve Out Union Territories:** The judgment affirmed Parliament's authority to create a union territory from a state, without needing the state's consent. This understanding, especially when read in conjunction with the power to make changes under President's rule, potentially weakens the federal structure.

#### Analysis of the Court's Approach:

- **President's Rule and Permanent Changes:** The Court's interpretation of Article 356, under which President's rule is imposed, is critical. While recognizing that actions taken during President's rule should relate to governance exigencies, the Court allowed for permanent, fundamental changes to a state's status. This interpretation contradicts the intended temporary nature of President's rule, aimed at restoring constitutional machinery in a state.
- **SR Bommai Case and Implied Limitations:** The judgment contrasts with the approach in the SR Bommai case, where the Supreme Court imposed limitations on President's rule to prevent its misuse. In the Article 370 case, the Court did not apply a similar doctrine of implied limitations, which could have served as a safeguard against potential overreach by the Union.
- **Constitutional Machinery and Statehood:** The ruling seems to ignore the principle that the objective of President's rule is to restore a state's constitutional machinery. The conversion of a state into a union territory, as happened with Jammu and Kashmir, does not align with this principle, as it represents a fundamental alteration of the state's constitutional status.
- **Judicial Abdication and Federalism:** The Court's reluctance to address the issue of converting a state into a union territory signifies a form of judicial abdication on a critical constitutional matter. This hesitancy to engage with substantive constitutional interpretation can have far-reaching implications for Indian federalism.
- **Textual Reading of Article 3:** The Court's reliance on a textual interpretation of Article 3, which deals with the formation of new states and alteration of areas, boundaries, or names of existing states, fails to consider the broader federal principles embedded in the Constitution.

#### Conclusion:

The Supreme Court's judgment in the Article 370 case sets a worrying precedent for federalism in India. By allowing for significant changes to a state's status under President's rule and avoiding crucial questions about the downgrading of a state to a union territory, the Court's ruling could



potentially empower the Union Government to unilaterally alter the federal structure. This approach raises critical questions about the balance of power between the Union and the states and the role of the judiciary in safeguarding federal principles.

### **5. Can film review be banned in light of article 19(1)(a) of Constitution**

The Kerala High Court's consideration of a writ petition filed by a film director seeking a "gag order" against social media influencers and film reviewers regarding the movie "Aromalinte Adyathe Pranayam" raises significant concerns about the freedom of speech and expression in India. This case touches upon several fundamental aspects of constitutional law, freedom of speech, and the role of judicial intervention in matters of public discourse and criticism.

#### **Constitutional Safeguards and Restrictions on Free Speech:**

Under the Indian Constitution, the fundamental right to freedom of speech and expression is enshrined in Article 19(1)(a). However, this right is not absolute and can be restricted based on the grounds listed in Article 19(2), including interests of sovereignty and integrity of India, security of the state, public order, decency or morality, defamation, contempt of court, and incitement to an offence. Crucially, any restriction on this right must be by way of a "law," which has been interpreted by the Supreme Court to mean a legislation passed by a state assembly or Parliament. A court order cannot supersede these constitutional protections.

#### **Misconception about Freedom of Press:**

The writ petition seems to misunderstand the scope of freedom of press under Article 19(1)(a). This article does not exclusively apply to journalists but extends to all citizens, as established in *Bennett Coleman & Co. v. Union of India*. Therefore, the protections for free speech extend to vloggers and social media influencers as well, making any distinction in this regard unconstitutional.

#### **Copyright Act and Criticism:**

The Court's treatment of the movie as an intellectual property is correct, but its approach to "review bombing" as an infringement of this right is problematic. Section 52(1)(ii) of the Copyright Act, 1957 explicitly excludes criticism or review from constituting copyright infringement. Thus, alleging an "attack" on property rights to silence honest opinions or reviews would be misaligned with the law.

#### **Issues with Court's Orders:**

The Court's orders identifying issues such as attacks on the reputation of moviemakers and the need to regulate anonymous posts with negative content oversimplify the impact of reviews on a movie's box office performance. The Supreme Court, in *R. Rajagopal v. State of Tamil Nadu*, asserted that the State cannot impose prior restraint on publication on defamation grounds. This principle should extend to fair criticism of movies.

**Freedom of Profession for Content Creators:**

Internet as a medium has democratized content creation, allowing individuals to pursue careers as content creators and bloggers. Their right to practice this profession falls under the protection of Article 19(1)(g), and their contribution to information flow is an integral aspect of Article 19(1)(a), as recognized by the Supreme Court.

**Judicial Precedents on Movie Screening and Reviews:**

Courts have historically protected filmmakers from attempts to ban their movies, applying a standard that considers the perspective of a reasonable, strong-minded individual. This standard, as delineated in *Anand Patwardhan v. Union of India* and *Bhagwati Charan Shukla v. Provincial Government*, should equally apply to film reviews, protecting them from the hypersensitivity of filmmakers.

**Conclusion:**

The Kerala High Court's approach in this case, including any suggestion of adopting standards for film reviews, could potentially infringe upon the constitutional right to freedom of speech and expression. Any protocol that restricts the ability of individuals to freely express their opinions on films, particularly under the guise of protecting intellectual property or reputation, must be carefully scrutinized to ensure compliance with constitutional guarantees. The right to critique and review is a fundamental aspect of free speech, integral to the democratic fabric of society, and any undue restriction on this right could have far-reaching implications for freedom of expression in India.

**6. Case of the Week**

**Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd [1961](the Wagon Mound case).**

**Facts of the Case:**

The case involved the ship 'Wagon Mound', which negligently discharged oil into the Sydney Harbour. The oil spread and reached the wharf where welding operations were taking place. Some cotton debris became embroiled with the oil and ignited, causing a fire that severely damaged the wharf.

**Issue:**

The primary legal question was whether the defendant, Overseas Tankship (UK) Ltd, could have reasonably foreseen the risk of fire as a result of their negligent act of discharging oil into the harbour.

**Judgment and Legal Principles:**

The Privy Council, led by Lord Simonds, delivered the judgement. The court held that the defendant was not liable for the damage caused by the fire. The rationale was that the damage was not a reasonably foreseeable consequence of the oil spill. The principle established in this case is that a defendant in negligence is only liable for the damage that was reasonably foreseeable.

### **Significance in Tort Law:**

The Wagon Mound case significantly shifted the approach to foreseeability in negligence cases. It established the 'reasonable foreseeability' test, which requires that, for a defendant to be held liable, the type of damage must be a foreseeable result of their negligence. This case moved away from the 'direct consequence' test, which was more lenient in establishing a connection between the defendant's actions and the resultant harm.

### **Application in Negligence Cases:**

This case is frequently cited in negligence cases to determine the scope of a defendant's liability. It emphasizes the importance of foreseeability in establishing a duty of care and is a key case in understanding the limitations of liability in negligence.

This case marks a pivotal moment in the development of negligence law, emphasizing the need for damage to be a foreseeable result of the negligent act for liability to be established.

## **7. Repeated PYQ**

**Enumerate the various methods of Peaceful Settlement of International disputes. Elaborate on judicial settlement.**

Peaceful settlement of international disputes is a fundamental principle of international law and relations, aimed at maintaining peace and security while respecting the sovereignty of nations. Various methods have been developed to resolve disputes without resorting to force. These methods can be broadly classified into diplomatic and legal approaches. Here's a breakdown of these methods:

### **Diplomatic Methods**

1. **Negotiation:** Direct talks between the disputing parties to reach a mutually acceptable solution. It's the most common and flexible method, involving no third-party intervention.
2. **Good Offices:** Involves a third party, usually a neutral state or an international organization, facilitating communication and encouraging the disputing parties to start or continue negotiations. The third party doesn't actively mediate.
3. **Mediation:** A third party actively helps the disputing parties find a mutually acceptable solution. The mediator proposes solutions, but the final decision rests with the parties involved.
4. **Conciliation:** A conciliation commission is established, typically comprising representatives from each party and a neutral chairperson. The commission investigates the dispute, suggests solutions, but doesn't impose a decision.



5. **Inquiry:** An investigation is carried out by an impartial body to establish facts in a dispute. It's often used when there's disagreement over what actually happened, rather than over the rights and wrongs of the issue.

### Legal Methods

1. **Arbitration:** Parties refer their dispute to one or more arbitrators, chosen by the parties or appointed by an external body. The arbitrators render a decision that is usually binding.
2. **Judicial Settlement:** Involves referring the dispute to a permanent judicial body like the International Court of Justice (ICJ). Let's delve deeper into this:
  - **Role:** The ICJ, also known as the World Court, is the primary judicial branch of the United Nations. It settles legal disputes submitted by states in accordance with international law.
  - **Jurisdiction:** The ICJ has jurisdiction over cases only if the states involved have consented to it. This consent can be given in a treaty, a special agreement for the case, or by a declaration accepting the court's jurisdiction generally.
  - **Procedure:** Cases are usually public and involve written and oral proceedings. The court examines evidence, hears arguments from both sides, and makes decisions based on international law.
  - **Decisions:** The decisions of the ICJ are binding on the parties involved and cannot be appealed. However, the ICJ has no means to enforce its rulings; it relies on the United Nations Security Council to enforce its decisions if necessary.
  - **Advisory Opinions:** The ICJ also gives advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies.
  - **Challenges:** The effectiveness of the ICJ is sometimes questioned due to issues like the voluntary nature of its jurisdiction and the reliance on the Security Council for enforcement.

*De Facto IAS*