Weekly Judiciary Digest

Download pdf from www.DeFactoJudiciary.in

Current & Conceptual Weekly

13th May to 20th May, 2025

1. Appellate Courts Cannot Enhance Sentence in Appeals Filed by Convicts: Supreme Court Clarifies....1
2. Presidential Reference Under Article 143(1): Revisiting the Boundaries of Advisory Jurisdiction....2
3. Safeguards and Judicial Scrutiny: Recent Guidelines on the UP Gangsters Act, 1986....4
4. Fresh Breach Permits New Execution Petition for Permanent Injunction: Supreme Court Clarifies Enforcement Rights....5
5. Supreme Court Declines to Frame Guidelines on Judicial Recusal, Reaffirms Judicial Discretion....6
6. Supreme Court Affirms Arbitral Tribunal's Power to Award Varying Interest for Different Phases Under Section 31(7) of Arbitration Act....7
7. Supreme Court Closes Suo Moto POCSO Proceedings with Directions for Expedited Justice....8
8. Supreme Court Bars Probation Relief for Food Adulteration Offences Committed Between 1976–2006 Under PoFA....9
9. Supreme Court Reiterates Mandatory Nature of Section 12A, Grants Prospective Relief for Pre-2022 Suits....10
10. "Constitution Alone is Supreme": CJI Gavai Reaffirms Constitutional Supremacy Amid Institutional Tensions....12
11. PRELIMS Q&A....13
12. MAINS Q&A....15
13. CLEAR CONCEPTS....16

1. Appellate Courts Cannot Enhance Sentence in Appeals Filed by Convicts: Supreme Court Clarifies

Case Title: Sachin v. State of Maharashtra

Citation: 2025 LiveLaw (SC) 592

Court: Supreme Court of India

Bench: Justices B.V. Nagarathna and S.C. Sharma

Date of Judgment: May 2025

In a significant ruling concerning the limits of appellate jurisdiction in criminal matters, the Supreme Court in *Sachin v. State of Maharashtra*, 2025 LiveLaw (SC) 592, held that **an appellate court cannot enhance the sentence in an appeal filed by the convict**, unless a separate appeal or revision has been preferred by the State, the victim, or the complainant seeking such enhancement.

The case arose from a judgment of the Nagpur Bench of the Bombay High Court, which had remanded a matter back to the trial court for reconsideration of sentence enhancement, despite the fact that the appeal was filed by the convict alone. The appellant was convicted for penetrative sexual assault under the POCSO Act and IPC, and had challenged both the conviction and sentence. However, **the High Court, while maintaining the conviction, directed a reconsideration of the sentence**, eventually leading to its enhancement from 7 years' rigorous imprisonment to life imprisonment.

The Supreme Court found this approach flawed and held that such a course **violated the principle of fairness** and the **statutory scheme of Section 386(b)(iii) CrPC**, which clearly states that in an appeal filed by the accused, the appellate court may alter the nature or extent of sentence **but not so as to enhance the same**.

The Court reaffirmed that **Section 401 CrPC does confer revisional powers on the High Court**, which may be exercised suo motu to enhance a sentence in appropriate cases, but **such powers must not be exercised within the scope of an appeal filed by the accused**, as doing so would **render the appellant worse off than before**, violating the **maxim *reformatio in peius***.

The judgment emphasizes that **for enhancement of sentence, a separate appeal or revision must be filed by the State, the victim, or the complainant**, and the accused must be given an opportunity to show cause against such enhancement. The Court also reiterated that the appellate court must not impose a greater punishment than what could have been inflicted by the original trial court.

In the present matter, the Supreme Court allowed the appeal, restoring the original sentence of 7 years' imprisonment and ordered the release of the appellant, who had already served a term exceeding that duration.

This decision is crucial for judiciary aspirants as it elucidates the **procedural boundaries within appellate criminal jurisdiction**, especially concerning **Section 386 CrPC**, and reinforces the importance of **due process and fair trial** norms. It also serves as a reminder of the **clear distinction between appellate and revisional jurisdiction**, and the **non-applicability of suo motu enhancement in convict's appeals**, unless initiated separately by competent parties.

2. Presidential Reference Under Article 143(1): Revisiting the Boundaries of Advisory Jurisdiction

Case Context: Presidential Reference on Governor's Power Over Bills

Legal Provision: Article 143(1), Constitution of India

Bench: Yet to be constituted (Reference Pending)

Court: Supreme Court of India

Date: May 2025

In a move that has reignited debates on the limits of constitutional advisory jurisdiction, the **President of India has invoked Article 143(1) of the Constitution** to refer **14 questions to the Supreme Court pertaining to the powers of the Governor and President regarding the assent, withholding, or return of Bills**. The development follows the Supreme Court's authoritative decision in *State of Tamil Nadu v. Governor of Tamil Nadu* (2024), where the Court had clarified constitutional boundaries concerning gubernatorial delay in granting assent to Bills.

Article 143(1) confers the President with the power to seek the advisory opinion of the Supreme Court on any question of law or fact that is of public importance. However, the Court is **not bound to answer such References**, as upheld in Special Reference No. 1 of 1964 and reaffirmed in *In Re: The Special Courts Bill, 1978*. The **only instance where the Court declined to answer a Presidential Reference** was in the *Ayodhya-Babri Masjid* dispute in 1993.

A central issue in the present case is whether **Article 143 can be invoked to re-agitate questions already settled** by the Supreme Court, especially when the Tamil Nadu Governor case has provided binding directions to constitutional authorities. The **Cauvery Reference case (1998)** is directly relevant here, where the Supreme Court held that **Article 143 cannot be used to sit in appeal over its previous judgments** or to reconsider matters already decided. **Final pronouncements made in adjudicatory jurisdiction are binding under Article 141**, and a Reference cannot override such decisions.

Nevertheless, **precedents such as the 2G Spectrum Reference (2012)** provide a nuanced view. There, the Court permitted a Reference seeking to clarify the ratio of an earlier judgment (*Centre for Public Interest Litigation v. Union of India*), provided that the lis inter partes (dispute between parties) was unaffected. The Court acknowledged that **clarification, explanation, or even reading down of previous judgments is permissible under Article 143**, so long as the binding outcome remains untouched.

There is also a **divergence of judicial opinion on whether an Article 143 opinion is binding**. While the Court in *St. Xavier's College v. State of Gujarat* (1974) held that advisory opinions lack binding force, **Justice Y.V. Chandrachud in the Special Courts Bill Reference** argued for their binding nature when rendered after full hearing and consideration. However, this issue remains unsettled and context-driven.

In the current scenario, **the political undertone of the Reference—triggered by dissatisfaction with the Tamil Nadu judgment—raises concerns** about whether it seeks a veiled review of a binding ruling. If so, the Court may choose to decline answering, as per the standards evolved in *Cauvery* and *2G Spectrum* References. The **Supreme Court's response will be crucial** in reaffirming the sanctity of its adjudicatory decisions and in delineating the **legitimate scope of Article 143's advisory power**.

3. Safeguards and Judicial Scrutiny: Recent Guidelines on the UP Gangsters Act, 1986

Case Title: Gorakh Nath Mishra v. State of Uttar Pradesh

Citation: Not yet reported

Court: Supreme Court of India

Bench: Justice B.R. Gavai and Justice K.V. Viswanathan

Date of Next Hearing: 20 May 2025

In a significant development concerning preventive detention laws and procedural safeguards, the **Uttar Pradesh government has recently issued detailed guidelines governing the invocation of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (UP Gangsters Act)**, along with the UP Gangster and Anti-Social Activities (Prevention) Rules, 2021. These steps were taken in response to a nudge from the **Supreme Court in the case of *Gorakh Nath Mishra***, who was booked under Section 3(1) of the Act. On re-examining his case under the newly framed parameters, the State found that the provisions of the Act were **not applicable**, exemplifying the need for such procedural reforms.

Key directions issued by the State aim to restrict arbitrary or excessive use of the Act. Importantly, the Act is now to be invoked **only when offences are committed by violence, intimidation, coercion, or threat for disturbing public order or gaining undue advantage**, and must reflect a pattern of gang-related activity.

Each **gang-chart must clearly mention the relevant sub-section of Section 2(b)** under which the listed offences fall, along with the **up-to-date status of each case**, including **filing of charge-sheets** and **status of trial or conviction**, as per **Rule 8(3)**.

A strict vetting process has been mandated: Approval of the gang chart must be preceded by a **joint meeting** of the Police Commissioner or District Magistrate with the concerned Superintendent of Police, as required under **Rule 5(3)(a)**. Their signatures must be dated, indicating conscious application of mind, and **mere mechanical approval has been expressly discouraged**.

Further, **cases previously used to invoke the Act cannot be reused in fresh gang-charts**, though such cases can be listed separately. The **entire case record must be reviewed** before approval is granted under **Rule 26(1)**. Additionally, the **investigation should not be conducted by the officer from the same police station where the case originated**, in order to avoid conflict of interest and ensure neutrality.

Administrative consequences are also emphasized: **gang members are to be denied access to government schemes, licenses, or contracts**, and **property attachment or license suspension may follow**, wherever warranted.

Investigations under the Act must be **completed within six months**, with only two permissible extensions of three months each, subject to approval. **Police custody remand** is advised, if deemed necessary, within **60 days** of arrest.

In a robust move towards **transparency and accountability**, the State has issued a **29-point checklist** and warned of **disciplinary action** against officials found negligent in adhering to these guidelines.

Meanwhile, the **Supreme Court is set to examine the constitutional validity** of certain provisions of the Act and the 2021 Rules. A petition challenging the same is listed for hearing on **May 20, 2025**, and could lead to further scrutiny of the law's application, particularly with respect to **due process, Article 21, and misuse of preventive detention powers**.

4. Fresh Breach Permits New Execution Petition for Permanent Injunction: Supreme Court Clarifies Enforcement Rights

Case Title: Saraswati Devi & Ors. v. Santosh Singh & Ors.

Citation: 2025 LiveLaw (SC) 587

Court: Supreme Court of India

Bench: Justices Sudhanshu Dhulia and K. Vinod Chandran

Date of Judgment: May 16, 2025

In a significant clarification concerning the **execution of decrees for permanent injunctions, the Supreme Court held that a subsequent Execution Petition (EP) can be validly filed for a fresh breach of a permanent injunction**, even if an earlier EP was satisfied. The judgment reinforces the **perpetual and enforceable nature of permanent injunctions** and excludes such decrees from the bar of **res judicata** in the event of repeated breaches.

The case arose from a long-standing dispute over possession of agricultural land. The appellants' predecessor had filed a suit which culminated in the grant of a **permanent prohibitory injunction** and cancellation of a 1998 sale deed in favor of the defendants. Following the decree, the appellants filed multiple EPs, the third of which—filed in 2012—was dismissed by the executing court on the ground that the decree had already been "fully satisfied" in an earlier EP. The High Court upheld this dismissal, failing to consider that **each breach of a permanent injunction gives rise to a fresh cause of action**.

Setting aside the High Court's ruling, the **Supreme Court held that the concept of "full satisfaction" in an earlier EP does not operate as a bar to a subsequent EP** where a **new breach of the injunction** is alleged. The Court emphasized that **permanent injunctions are intended to operate perpetually** and are not extinguished by a one-time enforcement.

Importantly, the Court clarified that **there is no limitation period for enforcing a decree of permanent injunction**, as per **Article 136 of the Limitation Act, 1963**. While the general

limitation for execution of decrees is 12 years, **the proviso to Article 136 specifically excludes decrees for perpetual injunctions from any time limit**. This means that **each new interference with the decree-holder's rights constitutes a fresh breach**, allowing them to seek enforcement at any time.

The Court explained: **"A decree of permanent injunction operates perpetually against the judgment-debtors, their assignees, and successors**. It can be enforced whenever there is a breach, and the **decree-holder enjoys a continuing right in personam**."

The ruling affirms a vital principle in civil procedure—**a permanent injunction remains enforceable throughout**, and procedural doctrines like res judicata do not defeat subsequent enforcement for fresh violations. It also underscores the protective strength such decrees afford to property rights, especially in rural and agricultural contexts where ongoing interference is a common issue.

5. Supreme Court Declines to Frame Guidelines on Judicial Recusal, Reaffirms Judicial Discretion

Case Title: Chandraprabha v. Union of India

Case No.: Diary No. 26250 / 2025

Court: Supreme Court of India

Bench: Justices Abhay S. Oka and Ujjal Bhuyan

Date of Judgment: May 16, 2025

In a judgment that reinforces the principle of **judicial independence and discretion**, the **Supreme Court dismissed a writ petition seeking guidelines for the recusal of judges**, holding that **recusal is a matter of personal discretion** and cannot be subjected to codified rules by judicial directive.

The petitioner, **Chandraprabha**, had previously approached the Court with a similar plea objecting to the recusal of a Karnataka High Court judge after reserving judgment in a matter involving serious corruption allegations against the family members of the Karnataka Lokayukta. That petition, which sought an **inquiry into the recusal** itself, was dismissed on **October 24, 2023**, for containing objectionable content that **cast aspersions on the judge**, though the Court granted the petitioner **liberty to file a fresh petition limited to the issue of guidelines on recusal**.

In the current petition, the petitioner submitted that **absence of clear norms for recusal leads to uncertainty**, particularly when judges recuse after hearing arguments or reserving judgment, as allegedly occurred in her case. She also cited **comparative legal practices** from other jurisdictions, where judges are required to disclose potential conflicts of interest in advance.

However, the **Court firmly rejected the plea, with Justice Abhay S. Oka observing**, *"Recusal is the discretion of the judge. Jurisdiction under Article 142 cannot be exercised for laying down guidelines for the recusal of judges."* The Court emphasized that **no constitutional or statutory mandate exists for framing binding rules in this domain**, and such discretion must be left to the **individual conscience and integrity of the judge concerned**.

The Bench acknowledged the petitioner's grievance that, following the recusal, no fresh bench had been constituted by the Karnataka High Court. To address this, the **Supreme Court advised the petitioner to approach the Chief Justice of the High Court on the administrative side**, assuring that **appropriate directions for re-assignment of the case would follow**.

The decision highlights the Court's consistent stance that **judicial recusal cannot be regulated by rigid norms**, as this would infringe on **judicial autonomy** and could potentially be misused to pressure judges or stall proceedings. Earlier in *State of West Bengal v. Shivananda Pathak* and other cases, the Court had similarly held that **recusal must flow from the judge's own assessment of impartiality** and not from external demands or perceptions.

6. Supreme Court Affirms Arbitral Tribunal's Power to Award Varying Interest for Different Phases Under Section 31(7) of Arbitration Act

Case Title: M/s. Interstate Construction v. National Projects Construction Corporation Ltd.

Citation: 2025 LiveLaw (SC) 585

Court: Supreme Court of India

Bench: Justices Abhay S. Oka and Ujjal Bhuyan

Date of Judgment: May 16, 2025

In a significant interpretation of the Arbitration and Conciliation Act, 1996, the **Supreme Court upheld the arbitral tribunal's power to award different rates of interest for different phases of a dispute**, including **compound interest**, under **Section 31(7)** of the Act. The Court allowed the appeal filed by *M/s. Interstate Construction*, overturning the **Delhi High Court's ruling**, which had invalidated the award of interest on interest.

The dispute arose from a 1984 contract for a Thermal Power Project in Andhra Pradesh. Although work was completed in 1987, unpaid dues led to arbitration proceedings initiated in 1993, which extended across nearly three decades. In 2020, the arbitral tribunal passed an award granting **pre-reference interest at 18% per annum (1987–1998), pendente lite interest at 12% per annum (excluding an 8-year delay caused by the claimant)**, and **future interest at 18% per annum**.

The High Court had set aside part of the award, holding that **interest on accrued interest (compound interest) was impermissible** under the Act. However, the Supreme Court disagreed, holding that such a **restrictive interpretation was contrary to the statutory framework**.

Justice Ujjal Bhuyan, writing for the bench, held that **Section 31(7)(a)** of the 1996 Act confers **discretion on the arbitral tribunal** to grant interest "on the whole or any part of the money awarded for the whole or any part of the period from the date on which the cause of action arose till the date on which the award is made." This includes **different rates for sub-periods** of the dispute timeline. The judgment emphasized that **interest can be excluded for periods where the claimant was at fault**, as the tribunal did in this case.

The Court further reinforced its reasoning by citing the landmark ruling in *Hyder Consulting (UK) Ltd. v. Governor, State of Orissa*, (2015) 2 SCC 189, where it was held that the **term "sum" in Section 31(7)(b) includes the principal plus interest, thereby permitting compound interest**.

Referring to recent decisions such as *Pam Developments Pvt. Ltd. v. State of West Bengal*, 2024 LiveLaw (SC) 613, and *North Delhi Municipal Corporation v. S.A. Builders Ltd.*, 2024 LiveLaw (SC) 1010, the Court reiterated that tribunals can grant **pre-award, pendente lite, and post-award interest**, and such grants must reflect fairness and commercial reasonableness.

Concluding that the **Delhi High Court misinterpreted the statutory framework**, the Supreme Court restored the arbitral award and directed the respondent—NPCC—to **pay the awarded sum along with compound interest as originally determined**.

7. Supreme Court Closes Suo Moto POCSO Proceedings with Directions for Expedited Justice

Case Title: In Re: Alarming Rise in the Number of Reported Child Rape Incidents

Case No.: SMW (Crl) No. 1/2019

Citation: 2025 LiveLaw (SC) 581

Court: Supreme Court of India

Bench: Justices Bela M. Trivedi and P.B. Varale

Date of Judgment: May 15, 2025

In a significant development aimed at strengthening the implementation of the **Protection of Children from Sexual Offences (POCSO) Act, 2012**, the **Supreme Court has formally closed the 2019 suo moto proceedings** initiated to address systemic shortcomings in the investigation and trial of POCSO cases. The Court, however, issued **robust directions to the Union and State Governments** to ensure strict compliance with the statutory timelines under the Act and to prioritise the establishment of **exclusive Special POCSO Courts**.

The bench observed that although the **POCSO Act mandates strict timelines for investigation and trial**, these are not being adhered to across many jurisdictions due to the **inadequate number of dedicated courts**. In this regard, the Court called for immediate and proactive steps by both

Union and State authorities to ensure compliance. The Court also directed that **chargesheets be filed within the prescribed statutory period** and that **trials be concluded within the time frames envisaged by the Act**.

While acknowledging that **several States have complied with** the earlier directions with assistance from **Central Government funding**, the Court expressed concern over **lagging implementation in States such as Tamil Nadu, Bihar, Uttar Pradesh, West Bengal, Odisha, and Maharashtra**, where **pendency remains alarmingly high**. The Court noted that **each district with more than 100 pending POCSO cases must have an exclusive special court**, a directive first issued in July 2019.

The decision follows a detailed State-wise compliance report submitted by **Senior Advocates V. Giri and Uttara Babbar**, who were appointed as **Amicus Curiae**. Based on their findings, the Court acknowledged progress in some regions but emphasized the **need for continued monitoring and sensitisation of officials**, including **investigating officers and public prosecutors**.

The Court reiterated its earlier position that **officials involved in the investigation and trial process must be sensitised**, and that the **appointment of Special Public Prosecutors** must be ensured. It also directed that the **Chief Secretaries and High Court Registrars** continue to coordinate efforts to meet the benchmarks laid down in the 2019 directions.

Additionally, the Court had previously expressed interest in developing a **National Scheme for victim compensation** under the POCSO framework, though this aspect remains under consideration.

8. Supreme Court Bars Probation Relief for Food Adulteration Offences Committed Between 1976–2006 Under PoFA

Case Title: Nagarajan & Anr. v. State of Tamil Nadu

Citation: 2025 LiveLaw (SC) 580

Court: Supreme Court of India

Bench: Justices Dipankar Datta and Manmohan

Date of Judgment: May 15, 2025

In a crucial ruling clarifying the interplay between reformative justice and statutory rigour in public health offences, the **Supreme Court held that the benefit of the Probation of Offenders Act, 1958, is not applicable to offences committed under the Prevention of Food Adulteration Act, 1954 (PoFA)**, during the period between **1976 and 2006, when Section 20AA of PoFA**, which **bars the application of probation**, remained in force.

The case arose from a conviction under the PoFA Act, where the appellants sought relief under the Probation of Offenders Act, citing **Articles 14 and 21 of the Constitution** and advocating for a

reformative approach. They also invoked **Article 20(1)** to argue that the lighter sentencing provisions of the **Food Safety and Standards Act (FSS Act), 2006**—which repealed PoFA and omitted Section 20AA—should apply retrospectively.

However, the **Court rejected this contention**, upholding that Section **20AA of PoFA**, introduced in 1976, **explicitly excluded the application of probationary relief** (except for minors) and was operative until the statute was repealed in 2006. The judgment, authored by **Justice Dipankar Datta**, relied heavily on the **savings clause under Section 97 of the FSS Act**, which preserves **penalties and liabilities under the repealed PoFA** for offences committed before the FSS Act came into force.

The Court observed:
"Section 20AA of the PoFA Act read with Section 97 of the FSS Act makes it clear that the benefit under the Probation Act cannot be made applicable to an offence committed between 1976...up to the repeal of the statute in 2006 by the FSS Act."

In doing so, the Court **distinguished the case from T. Barai v. Henry Ah Hoe (1983) 1 SCC 177**, where **retrospective application of lighter punishment** was allowed due to **the absence of a savings clause**. Instead, the Court followed the ratio in ***Basheer v. State of Kerala* (2004) 3 SCC 609**, where a similar savings provision precluded retroactive modification of sentences.

Importantly, the Court clarified that **food adulteration is a serious offence affecting public health**, and therefore legislative intent in PoFA was to ensure **stringent punishment**, not leniency. The **principle of reformative justice** must yield in such cases to the **objective of deterrence and public safety**.

While the **conviction was upheld**, the **sentence was modified to a fine**, taking into account the facts of the case and the passage of time.

9. Supreme Court Reiterates Mandatory Nature of Section 12A, Grants Prospective Relief for Pre-2022 Suits

Case Title: M/s Dhanbad Fuels Private Limited v. Union of India & Anr.

Citation: 2025 LiveLaw (SC) 579

Court: Supreme Court of India

Bench: Justices J.B. Pardiwala and R. Mahadevan

Date of Judgment: May 15, 2025

In a nuanced and clarificatory judgment, the **Supreme Court reaffirmed that pre-institution mediation under Section 12A of the Commercial Courts Act, 2015 is mandatory**, as declared in the landmark *Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd.*, (2022) 10 SCC 1. However, recognizing the realities of infrastructural constraints and pending suits, the Court

clarified that **this mandate is to be applied prospectively from 20.08.2022**, the date of the *Patil Automation* ruling.

In the present case, a **commercial suit filed in 2019** without undergoing pre-institution mediation was challenged by the defendant under **Order VII Rule 11(d) CPC**, citing non-compliance with Section 12A. While the **High Court declined to reject the plaint**, it directed the parties to mediation—a decision now upheld by the Supreme Court.

Justice Pardiwala, delivering the opinion of the Bench, laid down a **two-fold** test based on the date of institution of the suit:

- **For suits instituted on or after 20.08.2022**, failure to comply with Section 12A renders the plaint **liable to rejection** under Order VII Rule 11(d), either on defendant's application or by the court suo motu.
- **For suits instituted prior to 20.08.2022**, the court may **keep the suit in abeyance and direct time-bound mediation**, particularly if an objection is raised or any party expresses intent to mediate.

This approach, the Court held, ensures **prospective application of a mandatory procedural rule** without disturbing ongoing litigation filed when the law's applicability was unsettled or **when the mediation infrastructure was inadequate**.

Importantly, the Court identified **exceptional categories** (Para 47) where retrospective application may be permissible—such as cases where the plaint was already rejected and limitation lapsed, or where a High Court had expressly held Section 12A to be mandatory even before Patil Automation.

The Court also **mandated a specific timeline for mediation** under the **PIMS Rules: three months from the date of referral**, extendable by a further **two months**.

The judgment reflects a **balanced application of procedural discipline and judicial pragmatism**, ensuring that **legislative intent for alternative dispute resolution is respected**, while **avoiding injustice to litigants in transition-phase cases**.

This ruling is critical for judiciary aspirants as it emphasizes:

- The **mandatory yet prospective nature of Section 12A** compliance,
- The **procedural consequences under Order VII Rule 11**, and
- The **growing judicial emphasis on pre-litigation mediation** as part of commercial dispute resolution.

In conclusion, while reaffirming *Patil Automation*, the Court in *Dhanbad Fuels* ensures that **access to justice is not denied on procedural grounds** to those who filed suits in good faith before the rule was clearly settled.

10. "Constitution Alone is Supreme": CJI Gavai Reaffirms Constitutional Supremacy Amid Institutional Tensions

Event: Felicitation Ceremony by Bar Council of Maharashtra and Goa

Date: May 12, 2025

Location: Mumbai

Speaker: Chief Justice of India Dr. D.Y. Bhushan Gavai

Citation: Remarks delivered at public function, no formal case reference

In a timely and pointed clarification, **Chief Justice of India Bhushan Gavai** asserted that **"The Constitution of India alone is supreme,"** amidst ongoing debates about the relative powers of the judiciary, executive, and legislature. Speaking at a felicitation event in Mumbai hosted by the Bar Council of Maharashtra and Goa, the newly sworn-in **CJI Gavai** addressed the growing rhetoric claiming **Parliament's supremacy over the judiciary**, and emphasised the **constitutional balance of powers**.

The CJI's remarks come in the wake of **recent comments by Vice President Jagdeep Dhankhar**, who criticized the judiciary for allegedly trying to act as a "super Parliament" after the **Supreme Court set timelines for the President and Governors to act on Bills**. In response, **CJI Gavai underlined** that all **three pillars of democracy—the Judiciary, Executive, and Parliament—are bound by the Constitution**, which remains the paramount legal document governing all actions of the State.

"Each branch of the State, especially in a constitutional democracy, acts within the framework of the Constitution," CJI Gavai said, echoing the position earlier taken by his predecessor, **CJI Sanjiv Khanna**, who had also stressed that **statutory actions are subject to judicial review within constitutional limits**.

Referring to the **landmark judgment in *Kesavananda Bharati v. State of Kerala* (1973)**, CJI Gavai noted that the **basic structure doctrine** has ensured that the **separation of powers remains intact**, allowing the three organs to function independently yet harmoniously. Justice **Abhay S. Oka**, also present at the event, reinforced this view by highlighting how the **Kesavananda judgment has preserved India's democratic ethos**, especially when viewed in comparison to constitutional breakdowns in neighboring nations.

Justice **Surya Kant**, another judge of the apex court, added that the **Supreme Court remains committed to upholding the rule of law** and expressed confidence in **CJI Gavai's leadership**, calling it a continuation of judicial strength and constitutional fidelity.

CJI Gavai also spoke candidly about his personal journey—from a **small village in Maharashtra's Amravati district** to becoming **the Chief Justice of India**, crediting his **father, Ramkrishna Gavai**, and the **ideology of Dr. B.R. Ambedkar**, particularly the emphasis on **social and economic justice**. He shared how values of **inclusiveness, justice, and public service** learned from his joint family upbringing and public life experiences guided his judicial philosophy.

This moment is highly instructive for judiciary aspirants as it underscores:

- The **primacy of the Constitution over any single branch of government**,
- The **role of the judiciary in upholding the basic structure doctrine**, and
- The **importance of judicial review as a constitutional mandate**, not judicial overreach.

The debate on constitutional supremacy remains central to India's democratic discourse. CJI Gavai's remarks serve as a **reaffirmation of the judiciary's constitutional role**, not as an adversary of the legislature or executive, but as a **coequal branch committed to the Constitution's supremacy** and the rule of law.

11. PRELIMS Q&A

1. Hindu Marriages Act, 1955—
   a. Does not prescribe, the ceremonies requisite for solemnization of marriage but leaves it to the parties to choose a form of ceremonial marriage which is in accordance with any custom or usage applicable to either party
   b. Does not prescribe the ceremonies requisite nor leave it to the parties to choose
   c. Does prescribe the ceremonies requisite nor leave it to the parties to choose
   d. Does prescribe the ceremonies and at the same time leaves it to the parties to choose

Correct Answer: A

Explanation: The Hindu Marriage Act, 1955 does not prescribe specific ceremonies for the solemnization of marriage but rather leaves it to the parties to choose a form of ceremonial marriage in accordance with any custom or usage applicable to either party. This approach provides flexibility, allowing for the diversity of cultural practices across different Hindu communities to dictate the form of the marriage ceremony.

2. Under Section 7 of the Hindu Marriage Act, 1955, a Hindu marriage may be solemnised according to the customary rites and ceremonies of :
   a. Both the parties
   b. Either of the parties
   c. Both (a) and (b)
   d. Only (a)

Correct Answer: B

Explanation: Under Section 7 of the Hindu Marriage Act, 1955, a Hindu marriage may be solemnized according to the customary rites and ceremonies of either of the parties. This allows for the adaptation of either bride's or groom's customs, accommodating the diversity of ritual practices found within Hinduism.

3. The leading case of Hindu husband's entering second marriage on conversion to Islam is—
   a. Mohini Jain's case, 1992 (3) SCC 666
   b. Daniel Latifi's case, 2001 (7) SCC 740
   c. Sarla Mudgal's case, 1995 (3) SCC 635
   d. Shah Bano's case, 1985 (2) SCC 556

Correct Answer: B

Explanation: The leading case concerning a Hindu husband entering a second marriage upon conversion to Islam is Sarla Mudgal's case, 1995 (3) SCC 635. This case addressed the legal complexities arising from conversion to Islam solely for the purpose of remarrying without dissolving the first marriage under Hindu law.

4. A Hindu husband converting to Islam and marrying again will be guilty of bigamy. It was held in which of the following case ?
   a. Baburao v. State of Maharashtra
   b. Dr. AN. Mukberji v. State
   c. Sarla Mudgal v. Union of India
   d. P.V. Venkatraman v, State

Correct Answer: C

Explanation: In the case of Sarla Mudgal v. Union of India, it was held that a Hindu husband converting to Islam and marrying again would be guilty of bigamy. This landmark judgment underscored the applicability of bigamy laws to individuals converting their religion from Hinduism to Islam with the intention to circumvent legal restrictions on multiple marriages.

5. A Hindu marriage may be solemnised according to the customary rites and ceremonies of
   a. Bride
   b. Bridegroom
   c. Both the parties
   d. Either party (bride and bridegroom) thereto

Correct Answer: D

Explanation: A Hindu marriage may be solemnized according to the customary rites and ceremonies of either party (bride or bridegroom) involved. This provision in the law accommodates the various customs and rituals that different Hindu communities may follow, ensuring the marriage is considered valid if it adheres to the traditions of either spouse.

6. Which of the following ceremonies is/are obligatory under Hindu Marriage Act, 1955 for a valid marriage?
   a. Kanyadan
   b. Saptapadi
   c. Customary rites and ceremonies of either party
   d. All of the above

Correct Answer: C

Explanation: Under the Hindu Marriage Act, 1955, the only obligatory ceremonies for a valid marriage are the customary rites and ceremonies of either party. This means that specific rituals like Kanyadan or Saptapadi, while traditionally important, are not legally mandatory unless they are part of the customs observed by either party.

7. Which of the following modifies the application of Muslim Law?
   a. Muslim Marriage Dissolution Act, 1939
   b. Muslim Women (Protection of Rights on Divorce) Act, 1986
   c. Shariat Act, 1937
   d. All of the above

Correct Answer: D

8. Shariat Act, 1937 contains only-
   a. 12 sections
   b. 6 sections
   c. 15 sections
   d. 9 sections

Correct Answer: B

9. Muslim Law does not apply to which of the following ?
   a. Gifts
   b. Maintenance
   c. Justand Trost Properties
   d. Succession to agricultural land

Correct Answer: D

10. Which of the following Muslim Laws applies in India?
   a. Muslim Penal Law
   b. Muslim Law of Evidence
   c. Muslim Law of Sales of goods
   d. Muslim Women (Protection of Rights on Divorce) Act, 1986

Correct Answer: D

12. MAINS Q&A

Question

Explain the maxim vigilantibus non dormientibus jura subveniunt. To what extent doctrine is incorporated in the law of limitation in India?

Marks: 10

Answer

The Latin maxim "Vigilantibus Non Dormientibus Jura Subveniunt," translates to "the law assists those who are vigilant with their rights, and not those who sleep on them." This principle plays a crucial role in the legal systems worldwide, including India, particularly in the context of the Law of Limitation.

Understanding the Maxim
At its core, this maxim implies that the law favours those who are diligent and proactive in asserting their rights. It operates under the principle that legal redress is available only to those who are prompt and vigilant in seeking it. The underlying rationale is to encourage timely resolution of disputes and to ensure legal certainty and fairness.

Law of Limitation in India
The Indian legal system incorporates this maxim primarily through the Limitation Act, 1963. This statute prescribes time limits within which legal action must be initiated for various types of claims. If a claimant fails to initiate legal proceedings within the prescribed time frame, their right to sue is typically barred, embodying the principle of "vigilantibus non dormientibus jura subveniunt."

Provisions Emphasising the Maxim

- **Fixed Time-Frame for Legal Action**: Different types of actions have specific time limits within which they must be initiated. This enforces the principle that rights must be actively pursued.
- **Exceptional Circumstances**: The Act recognizes certain exceptional circumstances under which the strict application of time limits can be relaxed, like in cases of disability, acknowledgment of liability, or fraud. However, these exceptions do not detract from the maxim's essence but rather ensure justice in extraordinary situations.

In **Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors**, the Supreme Court laid down guidelines for condoning delay, stressing the importance of ensuring justice and not defeating it by adherence to technicalities.

The maxim "Vigilantibus Non Dormientibus Jura Subveniunt" is fundamentally embedded in the Indian Law of Limitation. It serves as a cornerstone, balancing the need for timely prosecution of rights with the principles of justice and fairness. While it ensures that the legal system is not burdened with stale and obsolete claims, its application is tempered by judicial wisdom to prevent miscarriage of justice.

13. CLEAR CONCEPTS

Key Concept in Arbitration Law: Principle of Party Autonomy

One of the **most crucial concepts in Arbitration Law** that judiciary aspirants must understand is the **principle of "Party Autonomy"**. This principle lies at the core of arbitration and is a

foundational tenet of the Arbitration and Conciliation Act, 1996. It empowers the parties to an arbitration agreement to **freely determine the procedural and substantive aspects** of the arbitration process.

Meaning and Scope:
Party Autonomy means that the parties to an arbitration agreement are **free to choose**:

- The governing law of the arbitration,
- The seat/venue of arbitration,
- The number and qualifications of arbitrators,
- The procedure to be followed (subject to mandatory provisions of the Act),
- The scope of arbitration and types of disputes covered.

This allows for greater flexibility, efficiency, and customization, especially in commercial disputes.

Statutory Basis:
Under the **Arbitration and Conciliation Act, 1996**, various sections reflect the principle of party autonomy:

- **Section 7**: Parties' freedom to define the arbitration agreement.
- **Section 11**: Parties may agree on the procedure for appointment of arbitrators.
- **Section 20**: Parties can decide the seat of arbitration.
- **Section 28**: Parties can choose the substantive law applicable to the dispute.

Landmark Case Laws:

1. BALCO v. Kaiser Aluminum Technical Services Inc. (2012) 9 SCC 552
The Supreme Court emphasized **party autonomy in choosing the seat of arbitration** and held that Part I of the 1996 Act (which deals with domestic arbitrations) does **not apply to foreign-seated arbitrations**, respecting the parties' agreement.

2. Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd. (2017) 2 SCC 228
The Court upheld the parties' agreement to two-tier arbitration, recognizing that such procedural autonomy is valid under Indian law. This reaffirmed the **freedom to design arbitration procedures**.

3. Indus Mobile Distribution Pvt. Ltd. v. Datawind Innovations Pvt. Ltd. (2017) 7 SCC 678
This case reinforced that **once the parties agree on the seat of arbitration, the courts at the seat alone have exclusive jurisdiction** over the arbitral proceedings, illustrating how party autonomy determines jurisdiction.

4. Perkins Eastman Architects DPC v. HSCC (India) Ltd. (2019) 20 SCC 760
The Court clarified that **a party cannot unilaterally appoint a sole arbitrator**—ensuring that party autonomy is balanced with fairness and impartiality in the appointment process.

Relevance to the Judicial System:
For judiciary aspirants, understanding party autonomy is critical because:

- It determines the jurisdictional competence of courts in arbitration-related matters.

- It informs the court's role in appointing arbitrators (Section 11) or referring parties to arbitration (Section 8).
- It impacts decisions on enforcement of awards, especially under Part II for foreign awards.
- It guides courts in maintaining a pro-arbitration stance, minimizing judicial intervention.

Conclusion:
The principle of **party autonomy reinforces the consensual nature of arbitration** and underpins the Arbitration Act's pro-business, party-centric approach. Courts in India have progressively upheld this principle while ensuring **fairness and public policy compliance**, making it an indispensable concept for judiciary aspirants to master.