

Weekly Update for Law Optional UPSC

A mix of Conceptual, Current/Contemporary Topics

16th September – 22nd September 2024

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1) India's notice to Pakistan Regarding the Indus Water Treaty

The Indus Water Treaty (IWT) was signed in 1960 between India and Pakistan, facilitated by the World Bank. It allocates the water of the Indus River and its tributaries between the two countries. Under the treaty, India has control over the eastern rivers (Beas, Ravi, and Sutlej) while Pakistan has rights to the western rivers (Indus, Jhelum, and Chenab).

Recent Developments

India has issued a notice to Pakistan indicating its intention to amend certain provisions of the Indus Water Treaty. This decision arises from growing concerns over water scarcity, climate change, and regional tensions, especially in light of infrastructure projects in India that could affect river flows.

Key Legal Provisions of the Indus Water Treaty

- Water Allocation:** The treaty delineates which country has rights to which rivers, with a focus on ensuring equitable distribution.
- Dispute Resolution:** The treaty includes mechanisms for resolving disputes, primarily through a Permanent Indus Commission and provisions for arbitration.
- Provisions for Development:** India is allowed to utilize the western rivers for hydroelectric projects and irrigation under specific conditions.

Interaction between VCLT and the IWT

As a bilateral treaty, the Indus Waters Treaty is subject to the provisions of the VCLT. **Article 26 of the VCLT** enforces the binding nature of the IWT, requiring both India and Pakistan to respect the treaty's provisions in good faith. Should disputes arise over the interpretation or application of the IWT, the **interpretative rules in Article 31 of the VCLT** apply, ensuring that the treaty is interpreted according to its terms, context, and objectives.

In cases where either party alleges a breach of the IWT, **Article 60 of the VCLT** could potentially provide grounds for suspension or termination of the treaty, though this is unlikely, as the IWT includes its own dispute resolution mechanisms designed to resolve conflicts before reaching such a point.

2) Simultaneous Elections and Constitutional Amendments thereto

Simultaneous elections, where elections for the Lok Sabha and state assemblies are held at the same time, have been a topic of discussion in Indian political discourse. This approach could streamline the electoral process, reduce costs, and ensure governance continuity. However, implementing simultaneous elections requires significant constitutional amendments.

Proposed Amendments

1. **Amendment to Article 83:** Introduce provisions to allow for the synchronization of terms for Lok Sabha and state assemblies, enabling staggered or extended terms as necessary.
2. **Amendment to Article 172:** Modify this article to allow for adjustments in the terms of state assemblies to align with Lok Sabha elections, ensuring that elections can occur simultaneously.
3. **New Provisions for Presidential Rule:** Amend Article 356 to address how states will be managed if their assembly elections are not held due to alignment with Lok Sabha elections.
4. **Amendment to the Representation of the People Act, 1951:** This Act would need revisions to outline the process for simultaneous elections, including logistical arrangements, campaigning periods, and vote counting.
5. **Framework for Dissolution of Assemblies:** Establish clear guidelines on how and when state assemblies can be dissolved or extended to maintain synchronisation with the Lok Sabha.

Challenges and Considerations

- **Federalism:** The federal structure of India may be challenged by such amendments. Careful consideration of states' autonomy is necessary.
- **Political Consensus:** Achieving political agreement across parties is crucial for constitutional amendments.
- **Implementation Logistics:** The practical challenges of conducting simultaneous elections, such as security and administrative capabilities, must be addressed.

Implementing simultaneous elections in India would require substantial constitutional amendments to ensure that the processes are aligned at both the central and state levels.

While the benefits of such a system are compelling, the complexities involved in aligning different electoral cycles demand careful planning, broad political consensus, and clear legislative frameworks. The success of this initiative will hinge on a collaborative approach among various stakeholders, including political parties, electoral authorities, and civil society.

3) SC Ruling on Child Sexual material: Upholding Child Rights and Dignity

The Supreme Court in its recent decision penalizing storage of 'Child Pornography' explained that the act of consumption or storage of 'Child Sexual Exploitative and Abuse Material' had common underlining intent of the offence of child sexual abuse.

CSEAM: Material depicting sexual exploitation and abuse of children. Both consumption and production of CSEAM involve a deliberate intent to exploit and degrade children.

Objectification of Children: CSEAM reduces children to mere objects for sexual gratification, violating their dignity.

Protection of Children from Sexual Offences (POCSO) Act:

S. 15: Penalizes storage of pornographic material involving children.

S. 14 & 13: Penalizes use of children for pornographic purposes.

S. 11: Defines sexual harassment of a child.

S. 12: Punishment for sexual harassment.

Court's Observations

- **Common Malevolent Intent:** Both CSEAM and child sexual abuse share the intention of exploiting children.
- **Impact of Consumption:** Viewers may be desensitized to child abuse, potentially leading to further acts of exploitation.
- **Cycle of Abuse:** Increased demand for CSEAM leads to higher production, creating a cycle of exploitation.

CSEAM inflicts severe emotional, mental, and social harm on children. Victims may experience. Long-term Trauma, Psychological issues such as anxiety, depression, and PTSD.

Implications for Child Rights: Violation of fundamental rights, particularly the right to dignity and protection from harm. The ruling emphasizes the need for a protective environment for children that respects their dignity.

4). International Sea Authority

The International Seabed Authority (ISA) is an autonomous international organization established under the United Nations Convention on the Law of the Sea (UNCLOS). It was created to manage and regulate mineral-related activities in the international seabed area (often referred to as "the Area"), beyond national jurisdictions, to ensure the equitable and environmentally responsible use of ocean resources.

Establishment

The ISA was formally established in 1994 following the adoption of the 1982 UNCLOS, also known as the Constitution for the Oceans. The UNCLOS sets out the legal framework for marine and seabed activities, and the ISA is the central institution tasked with implementing its provisions concerning the seabed. The headquarters of the ISA is located in Kingston, Jamaica.

Key Functions and Mandate

The ISA's mandate is twofold:

Regulation and Control of Mineral Resources:

- The ISA has exclusive authority over seabed mining in the international seabed area, beyond national jurisdictions. This area contains vast deposits of polymetallic nodules, cobalt-rich ferromanganese crusts, and polymetallic sulphides, which are seen as valuable sources of minerals such as nickel, cobalt, copper, and manganese.
- The ISA issues exploration and exploitation licenses to states and private entities, ensuring that these activities are conducted under strict environmental safeguards and are managed for the benefit of all mankind.

Protection of the Marine Environment:

- The ISA is responsible for protecting the marine environment from the potential adverse effects of deep-sea mining activities. This includes ensuring that mining does

not cause harm to marine ecosystems and that states comply with environmental standards.

- The Authority has developed guidelines for environmental impact assessments and requires contractors to submit environmental management plans for their operations.

Structure and Governance

The ISA operates through a multilateral framework and has several organs responsible for carrying out its functions:

1. **The Assembly:** The Assembly is the supreme organ of the ISA, comprising all the member states of the Authority. Each member state has one vote in the Assembly. The Assembly formulates the policies of the ISA and is responsible for approving the Authority's budget, rules, regulations, and procedures concerning seabed mining.
2. **The Council:** The Council is the executive organ of the ISA and is responsible for supervising and coordinating the implementation of seabed mining regulations. It consists of representatives elected by the Assembly from among the ISA's member states. The Council oversees the activities of the Legal and Technical Commission, the body responsible for evaluating applications for seabed exploration and exploitation.
3. **The Secretariat:** The Secretariat, headed by the Secretary-General, is the administrative arm of the ISA. It provides the necessary services and support for the functioning of the Authority.
4. **The Legal and Technical Commission:** The Commission is a specialized body of experts responsible for reviewing exploration applications, preparing draft regulations, and making recommendations on environmental protection and resource management.

Equitable Sharing of Benefits

One of the ISA's central principles is ensuring that the benefits derived from the exploitation of the international seabed area, which is designated as the "common heritage of mankind," are shared equitably. This includes provisions for:

- **Financial Mechanisms:** The ISA is tasked with creating mechanisms for distributing the revenues generated from seabed mining to all member states, especially to benefit developing countries.
- **Capacity-Building and Technology Transfer:** The ISA promotes the transfer of technology and knowledge from developed countries to developing ones, enabling them to participate in seabed mining and ensuring they benefit from these resources.

Weekly Focus

Case of the week : McNaughten's Case

The **McNaughten's Case** (also spelled **M'Naghten's Case**) of 1843 is one of the most famous and influential cases in the history of criminal law, particularly regarding the **insanity defense**. The case set out the fundamental principles that determine when a defendant can claim insanity as a defense to criminal responsibility.

Facts of the Case:

Daniel McNaughten, a Scottish woodturner, suffered from **paranoid delusions**. He believed that the British Prime Minister, **Sir Robert Peel**, was conspiring against him. On **January 20, 1843**, in an attempt to assassinate Sir Robert Peel, McNaughten mistakenly shot and killed **Edward Drummond**, Peel's private secretary. After his arrest, it was evident that McNaughten was mentally ill.

At trial, McNaughten's defence argued that he was not responsible for his actions due to his **insane delusions**. The defence was successful, and McNaughten was acquitted on the grounds of insanity. This acquittal caused public outrage, and the case led to parliamentary questions about how insanity should be defined in law.

Legal Significance:

In response to the public and political outcry following McNaughten's acquittal, the **House of Lords** sought clarification from the judges of the time. The **McNaughten Rules** (sometimes called the **M'Naghten Rules**) were formulated as a result of these questions. These rules continue to form the legal standard for the insanity defence in many common law jurisdictions.

McNaughten Rules:

The McNaughten Rules laid down the following key principles for determining insanity in criminal law:

1. **Presumption of Sanity:** Every person is presumed to be sane unless proven otherwise.
2. **Defect of Reason:** To establish a defense on the ground of insanity, it must be proven that the defendant was suffering from a "defect of reason" caused by a "disease of the mind."
3. **Inability to Understand the Nature of the Act:** The defendant must not have understood the nature and quality of the act they were committing. If they did understand it, they must not have known that what they were doing was wrong. Specifically, the rules stated:

"To establish a defense on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."

PYQ Solution

1. **What is 'Constitutionalism'? Explain the said concept both in its negative and positive aspects in the context of India's tryst with 'Constitutionalism' and 'Constitutional Governance.'** (10 Marks, 2014)

Constitutionalism refers to a system of governance where the powers of the government are not absolute but are limited by the law. It aims to ensure that governmental authority is exercised within certain constraints to prevent arbitrary or despotic rule. In contrast, a mere constitution, without the principle of constitutionalism, may allow for unchecked governmental powers, leading to authoritarianism. Constitutionalism is thus the essence of a limited government, where power is distributed, controlled, and balanced to safeguard individual rights and freedoms.

Positive and Negative Aspects

Constitutionalism can be understood both in its positive and negative dimensions. The negative aspect of constitutionalism refers to the limitation on the arbitrary exercise of power by the government.

This **negative aspect** aims to ensure that no authority is vested with unchecked power, thereby guarding against despotism. In the Indian context, the principle of "Rule of Law" serves as a manifestation of this negative aspect. The judiciary, particularly through judicial

review, plays a critical role in ensuring that executive and legislative actions remain within the boundaries of the Constitution.

Basic Structure doctrine reflects the negative aspect of constitutionalism, where even constitutional amendments are subject to judicial scrutiny to prevent the erosion of fundamental rights and principles.

The **positive aspect** of constitutionalism, on the other hand, emphasises the need for active governance to fulfil the objectives of the state. This dimension calls for the government to act effectively within its constitutional framework to promote the welfare of the people, protect their rights, and ensure social justice. The Directive Principles of State Policy (DPSP) in the Indian Constitution, though non-justiciable, represent this positive aspect.

Constitutionalism and Constitutional Governance

India's constitutional governance is a dynamic balance between the positive and negative aspects of constitutionalism. The framers of the Indian Constitution envisioned a system of checks and balances that ensures both effective governance and the protection of individual freedoms.

The separation of powers between the executive, legislative, and judicial branches of government plays a crucial role in this regard. Article 50 of the Constitution explicitly calls for the separation of the judiciary from the executive in public services, highlighting the need for an independent judiciary to prevent the arbitrary use of power.

Moreover, constitutional governance in India has been shaped by the principles of federalism, which promote decentralisation of power.

- The division of powers between the Union and the states, as enumerated in the Seventh Schedule of the Constitution, ensures that power is not concentrated at the central level.
- Federalism embodies the positive aspect of constitutionalism by promoting local governance and decentralising decision-making powers. This decentralisation ensures that regional aspirations and needs are addressed while maintaining the integrity of the nation.

Challenges to Constitutionalism

Despite the robust constitutional framework, India's tryst with constitutionalism has faced challenges. Executive overreach, the misuse of the emergency provisions under Article 356, and legislative attempts to curb judicial independence have threatened the balance of power at various points in India's history.

The judiciary's compromised position during this period, particularly the infamous *ADM Jabalpur v. Shivkant Shukla* case, where the Court ruled in favour of unlimited executive power, demonstrated the fragility of constitutionalism.

However, subsequent judicial interventions, such as the *Minerva Mills* and *Indira Nehru Gandhi v. Raj Narain* cases, restored the supremacy of constitutionalism by reasserting the principle of limited government. The judiciary has, thus, been a crucial actor in India's journey toward maintaining constitutionalism, correcting deviations when necessary.

Law Optional and GS IV : Ethics and Constitutional Morality

Ethics refers to the principles that govern a person's or group's behaviour, distinguishing between right and wrong. Individuals must adhere to ethical standards to uphold justice, integrity, and public trust.

Key Concepts in Ethics

- Justice: Fairness in protection of rights and punishment of wrongs.
- Integrity: Consistency in actions, values, methods, measures, and principles.
- Accountability: Being answerable for actions, particularly in public office.

Ethical Frameworks

- **Deontological Ethics:** Focuses on rules and duties; actions are right or wrong based on adherence to rules.
- **Consequentialism:** Evaluates actions based on their outcomes; the rightness of an action depends on its consequences.
- **Virtue Ethics:** Emphasizes the character and virtues of the moral agent rather than rules or consequences

Constitutional Morality : A principle guiding the interpretation and application of the Constitution, emphasizing the spirit of the Constitution over strict textualism. Its features include :

- Respect for Fundamental Rights: Safeguarding individual liberties and justice.
- Upholding the Rule of Law: Ensuring laws are applied equally and fairly.
- Adherence to Democratic Values: Promoting accountability, transparency, and participation.

Relationship between Ethics and Constitutional Morality

Ethical considerations are integral to upholding constitutional morality, they ensure that the law serves justice rather than mere procedural compliance. Courts often invoke constitutional morality to interpret ambiguous provisions, promoting a dynamic understanding of rights and duties.

Relevant Cases :

Kesavananda Bharati Case (1973): Established the Basic Structure Doctrine, emphasising the need to uphold fundamental principles of constitutional morality.

Navtej Singh Johar v. Union of India (2018): Decriminalised consensual same-sex relations, showcasing the application of constitutional morality in promoting human rights.

Law and GS Paper - II : Democratic Governance under the Indian Constitution

The doctrine of democratic governance is central to the Indian Constitution and defines the framework of the Indian political system. India, being a sovereign, socialist, secular, democratic republic, rests on the principle that power ultimately belongs to the people, exercised through elected representatives.

This doctrine forms the backbone of constitutional law, reflecting the will of the people, checks and balances on governmental powers, and the protection of individual rights.

Constitutional Provisions Reflecting Democratic Governance

The Preamble of the Indian Constitution explicitly enshrines the ideals of democracy, justice, liberty, equality, and fraternity. These principles form the bedrock of India's commitment to democratic governance:

- Sovereign: The people of India have the ultimate authority, and no external power can dictate how the country should be governed.

- Democratic: India adopts a representative democracy, meaning the government is formed by individuals elected by the people through free and fair elections.
- Republic: The head of state (the President of India) is elected, not a hereditary monarch, affirming the principle that all public offices are open to citizens regardless of birth.

Key Features of Democratic Governance under the Indian Constitution

Separation of Powers: The Indian Constitution divides power between three branches of government:

- Legislature (Parliament): Responsible for law-making, it represents the people's will. At the national level, the Lok Sabha (House of the People) is directly elected by citizens, and the Rajya Sabha (Council of States) represents the states.
- Executive: Headed by the Prime Minister and the Council of Ministers, the executive is accountable to the legislature, ensuring democratic checks on the executive's functioning.
- Judiciary: An independent judiciary, headed by the Supreme Court, ensures that the laws passed by the legislature and actions taken by the executive are constitutional and uphold individual rights.

Federalism: India follows a quasi-federal structure, where powers are divided between the Union (Central) Government and State Governments. This structure reflects democratic governance by ensuring decentralization and empowering regional units to govern themselves within the larger constitutional framework.

Fundamental Rights (Part III): The Constitution guarantees several Fundamental Rights to individuals, safeguarding democratic values such as freedom of speech, equality, and the right to life. These rights ensure that the state remains accountable to its citizens, and individuals can challenge state actions that infringe upon their freedoms.

Directive Principles of State Policy (DPSP) (Part IV): These principles provide a framework for governance, aiming to establish a welfare state based on social, economic, and political justice. Though not legally enforceable, DPSPs guide lawmakers in framing policies that reflect the democratic goals of reducing inequality and improving the lives of the people.