

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 1st - 6th May 2023**

1. New International Economic Order - Major Principles.....	1
2. Evolution of definition of 'Rape' under IPC.....	2
3. PIL and Traditional Litigation.....	3
4. Functional immunity Under IL (Italian marine Case) : Legal Issues and Decision.....	4
5. "Reasonable person" standard Test and Negligence Tort.....	6
<b><u>Focus of The Week</u></b>	
6. Case of the week:Anoop Baranwal vs Union of India.....	7
7. Repeated PYQ Model Answer of the Week.....	8

Note: This pdf Can be Freely Downloaded from <https://www.defactolaw.in/law-optional-current-affairs-upsc>

## 1. New International Economic Order - Major Principles

The New International Economic Order (NIEO) refers to a set of proposals put forward by developing countries in the 1970s, aimed at reforming the global economic system in order to promote a more equitable distribution of wealth and resources. The main principles of the NIEO can be summarized as follows:

1. Sovereignty over natural resources: Developing countries should have full control over their natural resources to protect their economic interests and promote self-reliance.
2. Technology transfer and knowledge sharing: Developed countries should assist developing countries in acquiring advanced technologies and expertise, helping to bridge the technological gap and promote economic growth.
3. Trade and market access: Reforms in international trade policies should promote fair trade and improved market access for developing countries, reducing dependence on raw material exports and encouraging diversification of their economies.
4. Foreign Direct Investment (FDI) and financing for development: Developing countries should have access to fair and stable financial resources and FDI, while also retaining the right to regulate foreign investment for the benefit of their economies and societies.
5. Debt relief and restructuring: Debtor nations should be granted relief from unsustainable debt burdens, with provisions for restructuring and concessional financing.
6. Global governance and decision-making: Developing countries should have a greater voice in global economic institutions, such as the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO), to better represent their interests.
7. Special and differential treatment: Recognizing the unique challenges faced by developing countries, the NIEO called for special treatment and concessions to support their development efforts.

Although the NIEO did not lead to a complete overhaul of the global economic system as initially envisioned, some of its principles continue to influence discussions on international development, trade, and global governance today.

## 2. Evolution of definition of 'Rape' under IPC

The definition of rape has evolved over time in response to changing societal norms and a better understanding of the complexities surrounding sexual violence. While earlier definitions focused primarily on physical force and penetration, modern definitions are more inclusive and recognize a broader range of non-consensual sexual acts.

In India, the definition of rape has also undergone significant changes over the years. Some of the key changes include:

1. **Criminal Law (Amendment) Act, 2013:** In response to the infamous 2012 Delhi gang-rape case and the widespread protests that followed, the Indian government enacted the Criminal Law (Amendment) Act, 2013. This legislation broadened the definition of rape to include not only non-consensual penile-vaginal intercourse but also oral, anal, and digital penetration. It also recognized the use of objects for penetration as rape.
2. **Marital Rape:** Historically, Indian law did not recognize marital rape as a criminal offence. However, the 2013 amendment partially addressed this issue by criminalizing rape within marriage if the wife is below the age of 15. Nevertheless, marital rape remains a contentious issue in India, and there are ongoing debates and calls for broader recognition and criminalization of marital rape, regardless of the wife's age.
3. **Consent:** The concept of consent has become central to the definition of rape in recent years. The 2013 amendment clarified that a lack of physical resistance does not imply consent and that consent must be unequivocal, voluntary, and informed. It also specified that consent given under fear, intoxication, or a mistaken belief about the identity of the perpetrator is not valid.
4. **Gender Neutrality:** While the current definition of rape in India is still gender-specific and focuses on women as victims, there have been discussions and debates around making the definition gender-neutral to include male victims and transgender individuals. Although the current definition has not been amended to reflect this change, it remains an ongoing conversation.

These changes demonstrate how the definition of rape in India has evolved over time, becoming more inclusive and comprehensive. The legal framework continues to adapt to better address the complexities of sexual violence and to provide justice and protection to survivors.

- Supreme Court cases that have contributed to the evolving definition of rape and the understanding of sexual violence in India:
  1. **Tuka Ram and Anr. vs State of Maharashtra (1979)** - Mathura Rape Case: In this case, a young tribal girl named Mathura was raped by two policemen inside a police station. The trial court acquitted the accused, stating that Mathura was "habituated to sexual intercourse" and the absence of injuries on her body indicated consent. The Supreme Court upheld the acquittal, which led to widespread outrage and protests. This case led to significant amendments in the Indian rape laws in 1983, including introducing new provisions to protect the dignity of rape victims during trial proceedings and shifting the burden of proof in certain circumstances.
  2. **State of Punjab vs Gurmit Singh (1996):** In this case, the Supreme Court emphasized the importance of the victim's testimony in rape cases, stating that it should be given equal weight as

any other evidence. The Court also highlighted the need to protect rape victims from unnecessary humiliation and harassment during the trial process, reiterating the significance of the 1983 amendments.

3. **Sakshi vs Union of India (2004):** In this case, an NGO named Sakshi filed a Public Interest Litigation (PIL) seeking a broader interpretation of the term "rape" under Section 375 of the IPC. Although the Supreme Court did not directly expand the definition of rape, it emphasized that other provisions of the IPC (such as Section 377) could be used to address non-penetrative sexual assault. This case contributed to the discourse that eventually led to the more inclusive definition of rape under the 2013 amendment.
4. **Justice K.S. Puttaswamy (Retd.) vs Union of India (2017):** In this landmark judgment, the Supreme Court recognized the right to privacy as a fundamental right under the Indian Constitution. While this case was not directly related to rape, it has implications for the understanding of consent and the protection of sexual assault victims' privacy during trial proceedings.

These Supreme Court cases, along with others, have played a crucial role in shaping the legal framework and public discourse surrounding rape and sexual violence in India. They have contributed to the evolving definition of rape and the development of legal protections for victims, as well as influencing social attitudes and understanding of these issues.

### 3. PIL and Traditional Litigation

Public Interest Litigation (PIL) has emerged as an essential tool for promoting social justice, environmental protection, and human rights in India. It has transformed the legal landscape by allowing individuals and organizations to bring legal action in the public interest. In this article, we will explore the key differences between PIL and traditional litigation.

**I. Locus Standi**, also known as the right to sue, is a fundamental difference between PIL and traditional litigation.

- In traditional litigation, only the aggrieved party can initiate legal proceedings. This means that the person filing the case must have a direct and personal stake in the outcome of the case.
- In contrast, PIL allows any individual or organization to file a case on behalf of those who cannot represent themselves or are unable to access the legal system.

This concept of "representative standing" expands the scope of legal action to include the interests of the public at large, particularly marginalized and underprivileged sections of society. As a result, PIL has facilitated greater access to justice and enabled the courts to address systemic issues that impact the broader public.

#### II. Procedural Requirements

- PIL cases often have relaxed procedural requirements compared to traditional litigation, allowing for a more straightforward and expedited judicial process. For example, PIL cases may have simplified filing processes, flexible documentation requirements, and a more lenient approach to procedural formalities.
- Traditional litigations, strict procedural requirement is adhered too, in addition to traditional provisions of procedural laws like CPC or CrPC, SUPream court rules frame to regulate it own affairs is strictly applied.

### III. Nature of Issues Addressed

- PIL typically focuses on matters of public interest, addressing issues that affect a large number of people, the environment, or the broader society. These issues often involve fundamental rights, social welfare, or environmental concerns.
- In contrast, traditional litigation deals with private disputes between individuals or entities, often revolving around contractual, property, or personal matters.

### IV. Approach of the Judiciary

- In PIL cases, the judiciary often adopts a more proactive approach, embracing the concept of judicial activism. The courts may take suo moto cognizance of public interest matters or engage in more creative interpretations of the law to ensure that the public interest is served.
- In traditional litigation, the judiciary usually follows a more conservative approach, adhering strictly to the letter of the law and resolving disputes based on the established legal principles.

## 4. Functional immunity Under IL (Italian marine Case) : Legal Issues and Decision

Functional immunity, also known as official acts immunity or *ratione materiae* immunity, is a concept in international law that shields certain state officials from the jurisdiction of foreign courts while they are performing official duties on behalf of their state. The underlying rationale is that state sovereignty and the efficient conduct of international relations would be compromised if foreign courts could exercise jurisdiction over state officials for acts undertaken as part of their official functions.

Functional immunity typically applies to high-ranking state officials, such as heads of state, heads of government, foreign ministers, and ambassadors, who represent their country and act on its behalf. It can also extend to lower-ranking officials if their actions are within the scope of their official duties.

This type of immunity is limited in scope, as it only covers acts performed by an official in their capacity as a representative of their state, and not acts that are private or unrelated to their official functions.

Once an official leaves office, their functional immunity continues to protect them from being prosecuted for acts committed during their tenure, but it does not extend to acts committed after they have left office.

Functional immunity is distinct from personal immunity, also known as diplomatic immunity or *ratione personae* immunity, which provides broader protection for certain high-ranking officials, such as heads of state, heads of government, and diplomats, regardless of whether their actions are related to their official duties. Personal immunity is generally temporary and only applies while the individual is in office or holds the protected status.

It is important to note that functional immunity is not absolute and may be subject to exceptions, particularly in cases involving serious international crimes, such as genocide, war crimes, or crimes against humanity. In recent years, there has been a growing trend towards limiting the scope of immunity in these situations to ensure accountability for such crimes.

### Italian Marine Case

The Italian marine case, also known as the Enrica Lexie incident, is a prominent example of a situation where functional immunity under international law was a critical issue. The case involved two Italian

marines, Massimiliano Latorre and Salvatore Girone, who were part of a military team providing anti-piracy protection aboard the Italian oil tanker MV Enrica Lexie. On February 15, 2012, the marines allegedly shot and killed two Indian fishermen, mistaking them for pirates, off the coast of Kerala, India.

The incident led to a diplomatic dispute between India and Italy over jurisdiction and the application of functional immunity. Italy argued that the marines were acting in their official capacity as members of the Italian military and should, therefore, be granted functional immunity from prosecution in Indian courts. According to Italy, the case should be handled in Italy under Italian law. On the other hand, India claimed jurisdiction over the case, asserting that the incident occurred in its territorial waters and involved the killing of Indian citizens.

The dispute was eventually brought before the Permanent Court of Arbitration (PCA) in 2015. In its final ruling, issued on May 21, 2020, the PCA found that both India and Italy had violated international law.

### **Constitution of Tribunal**

The tribunal was composed of five arbitrators: Judge Vladimir Golitsyn (President), Judge Patrick Robinson, Judge Jin-Hyun Paik, Professor Francesco Francioni and Professor Pemmaraju Sreenivasa Rao.

The case went through several legal twists and turns in both Indian and international courts. The main points of contention were:

- The location of the incident and whether it occurred in India's territorial waters or in the contiguous zone or in the high seas.
- The applicability of the United Nations Convention on the Law of the Sea (UNCLOS) and the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) Convention to the case.
- The nature and scope of functional immunity for state officials and whether it extended to criminal acts committed outside their official functions.
- -The role and authority of the International Tribunal for the Law of the Sea (ITLOS) and the Permanent Court of Arbitration (PCA) in resolving the dispute.

The arbitral tribunal rendered its award on 21 May 2020, after more than four years of proceedings. The award addressed four main questions:

- (1) whether the tribunal had jurisdiction to decide on the dispute;
- (2) whether Italy or India had jurisdiction over the incident;
- (3) whether Italy or India had violated their obligations under UNCLOS or other rules of international law;
- (4) what remedies were available to the parties.

### **The tribunal's award can be summarized as follows:**

- The tribunal affirmed its jurisdiction to decide on the dispute, rejecting India's objections that the case involved issues of sovereignty and national security that fell outside the scope of UNCLOS. The tribunal held that UNCLOS provided a comprehensive framework for resolving disputes concerning maritime zones and that the incident occurred within India's exclusive economic zone (EEZ), which was subject to UNCLOS provisions.

- The tribunal found that Italy had jurisdiction over the incident, based on the principle of immunity of state officials from foreign criminal jurisdiction. The tribunal held that the Italian marines were acting as state officials in the exercise of their official functions when they fired at the fishing vessel, and that they enjoyed



functional immunity from India's criminal jurisdiction. The tribunal also held that India's exercise of criminal jurisdiction over the Italian marines was an infringement of Italy's freedom of navigation under UNCLOS.

- The tribunal found that both Italy and India had violated some of their obligations under UNCLOS or other rules of international law. The tribunal held that Italy had violated India's sovereignty by interfering with its right to conduct an investigation into the incident and by initiating international proceedings without exhausting local remedies. The tribunal also held that India had violated Italy's right to provide consular assistance to its nationals and had breached its obligation to cooperate with Italy in resolving the dispute.

- The tribunal ordered both parties to cease all criminal proceedings against the Italian marines and to take necessary steps to resume their cooperation in order to reach a mutually acceptable settlement. The tribunal also ordered Italy to pay compensation to India for the loss of life, physical harm, material damage and moral harm suffered by the Indian fishermen and their families as a result of the incident. The amount of compensation was left to be determined by the parties through consultations, failing which it would be decided by the tribunal in a separate phase.

## 5. "Reasonable person" standard Test and Negligence Tort

The "reasonable person" standard, also referred to as the "reasonable man" or "reasonable care" standard, is a fundamental concept in tort law, particularly in negligence cases. It is used to determine the level of care that an individual or entity is expected to exercise in a given situation to avoid causing harm or injury to others. In Indian tort law, the reasonable person standard plays a crucial role in establishing negligence and liability.

- The reasonable person standard is an objective test that helps courts assess whether a defendant's actions or omissions were negligent.
- It is based on the hypothetical behavior of a reasonable, prudent, and ordinary person in the same circumstances as the defendant, taking into account factors such as knowledge, skill, and experience.

The reasonable person standard has been applied in various Indian cases involving negligence, such as medical negligence, motor vehicle accidents, and workplace accidents.

1. **Medical Negligence:** In the case of *Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole* (AIR 1969 SC 128), the Supreme Court of India emphasized the reasonable person standard in the context of medical negligence. The court held that a doctor is expected to exhibit the skill and knowledge that a reasonably competent medical practitioner in the same field would possess, thereby applying the reasonable person standard to medical professionals.
2. **Motor Vehicle Accidents:** In the case of *S.K. Verma v. Mahesh Chandra* (AIR 1983 SC 1216), the court applied the reasonable person standard to determine whether the defendant, a driver, had acted negligently. The court held that the defendant failed to exercise the degree of care that a reasonably prudent driver would have exercised in similar circumstances, resulting in a motor vehicle accident.

3. **Workplace Accidents:** In the case of General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (1994) 2 SCC 176, the court applied the reasonable person standard in assessing the liability of the employer for a workplace accident. The court found that the employer had failed to maintain proper safety standards in the workplace, breaching the duty of care it owed to its employees.

## 6. Case of the week: Anoop Baranwal vs Union of India

The Supreme Court of India recently delivered a landmark judgment on the appointment of the Chief Election Commissioner (CEC) and other Election Commissioners (ECs). The judgment, which was pronounced by a five-judge Constitution Bench on March 2, 2023, in Anoop Baranwal vs Union of India, has significant implications for the independence and functioning of the Election Commission of India (ECI), which is entrusted with the task of conducting free and fair elections in the country.

The main issue before the court was whether the existing mode of appointment of the CEC and ECs by the President, acting on the advice of the Prime Minister, was constitutionally valid and adequate to ensure the independence of the ECI. The court noted that Article 324(2) of the Constitution, which provides for such appointment, also empowers Parliament to make a law on this subject. However, no such law has been made till date, leaving a gap in the constitutional scheme.

### Use of Article 142

The court held that this gap needs to be filled by an interim measure until Parliament enacts a law. The court invoked its power under Article 142 of the Constitution, which allows it to pass any order necessary for doing complete justice, and directed that henceforth, the appointment of the CEC and ECs shall be made by a three-member committee consisting of the Prime Minister, the Leader of Opposition (or the leader of the largest opposition party in Parliament), and the Chief Justice of India. The court also urged Parliament to make a law on this matter as soon as possible.

The court based its decision on several legal arguments.

- First, it relied on the historical context and intent behind Article 324(2), which showed that the framers of the Constitution wanted to keep the ECI free from executive interference and control. The court referred to various debates and discussions in the Constituent Assembly, where several members expressed their views on how to ensure the independence and impartiality of the ECI.
- Second, it considered the expanding role and functions of the ECI over time, which have made it one of the most important constitutional institutions in a democracy. The court observed that the ECI has been entrusted with various powers and duties under various laws and judgments, such as delimitation of constituencies, registration and recognition of political parties, regulation of election expenditure, enforcement of model code of conduct, etc. The court also noted that the ECI has faced various challenges and difficulties in performing its functions due to lack of resources, staff, infrastructure, etc.
- Third, it examined the comparative position and practice in other countries with respect to the appointment of election commissioners. The court found that in many countries, such as Australia,

Canada, Germany, South Africa, UK, etc., there is a statutory or constitutional mechanism for appointing election commissioners through a bipartisan or multi-party committee or commission. The court also referred to various international conventions and declarations that emphasize the need for ensuring independence and autonomy of election management bodies.

### Interim Measure

The court concluded that in light of these arguments, it was necessary to devise an interim measure to ensure that the appointment of CEC and ECs is made in a transparent and participatory manner, involving representatives from different branches and parties of government. The court also clarified that its order does not affect or alter the existing tenure or conditions of service of CEC and ECs, which are governed by Article 324(5) of the Constitution and the Election Commission Act 1991.

The judgment has been widely welcomed by various experts and commentators as a progressive step towards strengthening democracy and electoral integrity in India. It has also been hailed as an example of judicial activism and innovation in filling constitutional gaps. However, some critics have also raised questions about the legality and propriety of judicial intervention in a matter that belongs to Parliament's domain. They have also expressed doubts about whether such an interim measure will be effective and sufficient to ensure independence and accountability of ECI.

## 7. Repeated PYQ Model Answer of the Week

### Q. What are the Major Sources and Principle of International Humanitarian law

International Humanitarian Law (IHL), also known as the law of armed conflict or the law of war, is a set of rules and principles that seek to regulate the conduct of armed conflict and protect individuals who are not or are no longer participating in hostilities. IHL aims to limit the effects of armed conflict on people and property, as well as to alleviate human suffering.

#### IHL is primarily derived from two sources:

1. **Treaties:** These are legally binding agreements between states, which set forth the rules of IHL. The most important treaties in this area are the four Geneva Conventions of 1949 and their Additional Protocols. The Geneva Conventions focus on the protection of persons who are hors de combat (out of the fight), such as wounded, sick, or shipwrecked military personnel, prisoners of war, and civilians. The Additional Protocols expand on these protections and also provide rules for the conduct of hostilities.
2. **Customary International Law:** These are unwritten rules that are derived from the consistent and general practice of states, undertaken out of a sense of legal obligation. Customary IHL is particularly important in situations where a conflict involves a non-state armed group, as they may not be bound by the relevant treaties.

#### IHL is based on a few key principles:

1. **Principle of Distinction:** The principle of distinction is enshrined in Article 48 of Additional Protocol I (AP I) to the Geneva Conventions, which requires parties to a conflict to distinguish between



combatants and civilians, and between military objectives and civilian objects. Attacks must be directed only against combatants and military objectives.

2. **Proportionality:** The principle of proportionality is laid down in Article 51(5)(b) of AP I and Article 57(2)(a)(iii) of AP I. These provisions prohibit attacks that may cause incidental harm to civilians or civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.
3. **Precautions in attack:** The obligation to take precautions in attack is provided in Article 57 of AP I, which requires parties to a conflict to take all feasible precautions to minimize harm to civilians and civilian objects and to avoid targeting them.
4. **Military necessity:** This principle is not explicitly defined in the Geneva Conventions or their Additional Protocols but is an underlying concept that influences many of the specific rules in IHL. It permits only actions that are necessary to achieve a legitimate military objective and are not prohibited by IHL.
5. **Humanity:** The principle of humanity is reflected in numerous provisions of the Geneva Conventions and their Additional Protocols, which aim to ensure respect and protection for the human dignity of all persons affected by the conflict. For example, Common Article 3 to the Geneva Conventions applies to both international and non-international armed conflicts, and requires humane treatment of all persons not taking an active part in hostilities, including civilians, wounded or sick combatants, and prisoners of war.

Note: This pdf Can be Freely Downloaded from <https://www.defactolaw.in/law-optional-current-affairs-upsc>

**De Facto IAS**