

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 16th - 22nd April 2023**

1. Digital Sovereignty and Cybersecurity in International Law.....	1
2. Link between Right to information and progress of India.....	2
3. State succession and sovereign Debt : International Principle and Cases.....	3
4. Plea bargaining - Blood money or Usefull tool?.....	4
4. Recent Significant Changes in Arbitration and Conciliation Act.....	6
<b>Focus of The Week</b>	
6. Case of the week: Navtej Singh Johar v. Union of India (2018):.....	7
7. Repeated PYQ Model Answer of the Week.....	8

## 1. Digital Sovereignty and Cybersecurity in International Law

Digital sovereignty refers to a nation's control over its digital space, including the data, infrastructure, and platforms that operate within its borders. As the internet has become increasingly essential to modern life, digital sovereignty and cybersecurity have emerged as pressing concerns in international law. Here are some key aspects of these issues:

- Data Privacy and Protection:** Countries are implementing legislation to protect their citizens' data privacy, such as the European Union's General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA) in the United States and proposed data protection bill in India. These laws govern the collection, processing, storage, and sharing of personal data, and they often have extraterritorial implications, meaning they can affect businesses and organizations operating outside the country where the law is enacted.
- Cross-border Data Flows:** As data flows across borders, countries are grappling with the challenge of balancing privacy concerns with the economic benefits of data-driven industries. This has led to various data localization policies, requiring companies to store data within the country of origin or comply with specific privacy and security standards. The debate over cross-border data flows has intensified, with some countries pushing for a more global approach to data governance, while others prioritize national security and data sovereignty.
- Cybersecurity and Cyber Warfare:** The rise of cyber threats, including state-sponsored cyber attacks, has prompted countries to develop national cybersecurity strategies and strengthen their cyber defense capabilities. International law is still evolving in this area, with ongoing discussions on the applicability of existing legal frameworks, such as the United Nations Charter and the International Law of Armed Conflict, to cyber operations.
- International Cooperation and Norms:** International organizations and fora, such as the United Nations Group of Governmental Experts (UNGGE) and the Budapest Convention on Cybercrime, are working to establish norms and principles governing state behavior in cyberspace. These efforts

aim to foster cooperation between countries, reduce the risk of cyber conflicts, and improve the overall security of the digital environment.

5. **Cyber Espionage and Intellectual Property Theft:** Cyber espionage and intellectual property theft have become major concerns in the international community, with allegations of state-sponsored hacking campaigns targeting sensitive information and trade secrets. In response, countries are developing legal frameworks to address these threats and protect their economic interests.
6. **Digital Platforms and Content Regulation:** The growing power of digital platforms, such as social media networks and search engines, has raised concerns about their influence on public opinion, the spread of misinformation, and the potential for monopolistic practices. Governments are increasingly scrutinizing and regulating these platforms, which can result in clashes over jurisdiction and digital sovereignty.

As technology continues to advance rapidly, digital sovereignty and cybersecurity will remain critical issues in international law. Efforts to address these challenges will require ongoing dialogue and cooperation between countries to establish effective norms, legal frameworks, and enforcement mechanisms that can adapt to the evolving digital landscape.

## 2. Link between Right to information and progress of India

The Right to Information (RTI) Act plays a significant role in the development of a country like India by promoting transparency, accountability, and good governance. The Act empowers citizens to access information held by public authorities, subject to certain exceptions. Here are some ways in which the RTI Act contributes to the development of India:

1. **Promoting transparency and accountability:** By granting citizens the right to access information held by public authorities, the RTI Act promotes transparency in the functioning of government agencies. This transparency helps keep public officials accountable for their actions, which leads to better governance and efficient use of resources.
2. **Combating corruption:** The RTI Act serves as an effective tool for combating corruption, as it enables citizens to scrutinize government policies, projects, and expenditures. By exposing irregularities, misuse of power, and corruption in the public sector, the RTI Act helps create a more honest and efficient administration.
3. **Strengthening democracy:** The RTI Act enhances the democratic process in India by empowering citizens with information, thereby enabling them to participate more actively in decision-making processes. Informed citizens can make better choices in elections and contribute to policy debates, strengthening the foundation of democracy.
4. **Encouraging informed decision-making:** By providing access to information, the RTI Act allows citizens, researchers, and civil society organizations to analyze government policies and their impact. This analysis can lead to more informed decision-making, better policy formulation, and improved public services.
5. **Enhancing public trust:** By promoting transparency and accountability, the RTI Act helps build public trust in government institutions. When citizens can access information about the functioning

of public authorities, they are more likely to have confidence in the system and support the government's development initiatives.

6. **Fostering social and economic development:** Access to information through the RTI Act can contribute to social and economic development by empowering citizens to demand better public services, such as healthcare, education, and infrastructure. With greater access to information, citizens can identify gaps in service delivery and hold public officials accountable, leading to improved public services and overall development.

In summary, the RTI Act plays a crucial role in India's development by promoting transparency, accountability, and good governance. The Act empowers citizens with information, enabling them to participate more actively in decision-making processes, combat corruption, and demand better public services, which ultimately contributes to the social and economic development of the country.

### 3. State succession and sovereign Debt : International Principle and Cases

State succession and sovereign debt are key concepts in international law that deal with the continuity and obligations of states in the context of changing political landscapes. The principles of international law with regard to state succession and sovereign debt can be summarized as follows:

1. **Principle of continuity of the state:** This principle asserts that the legal existence of a state remains unaffected by changes in its government or internal political organization. In the context of state succession, the newly formed state inherits the rights and obligations of the previous state.

**Case: German External Debts (Federal Republic of Germany v. Council of Ministers of Greece, Spain, and Portugal) [Advisory Opinion, 1952]:** In this advisory opinion, the International Court of Justice (ICJ) determined that the Federal Republic of Germany, as the successor state to the German Reich, was responsible for the latter's external debts. This case established the principle of continuity of obligations in state succession.

**Arbitration between Kuwait and Iraq in 1991:** After the Gulf War, Kuwait and Iraq submitted to arbitration to resolve the issue of Iraq's responsibility for Kuwait's foreign debt. The arbitral tribunal determined that Iraq, as the occupying power, was responsible for the debts incurred by Kuwait during the occupation. This case underscores the principle of continuity of obligations in cases of occupation and state succession.

2. **Principle of uti possidetis juris:** This principle, derived from Latin meaning "as you possess under law," emphasizes the importance of preserving existing borders and territorial boundaries during state succession. It helps to maintain stability and reduce the risk of territorial disputes.
3. **Principle of non-retroactivity:** This principle states that the legal effects of state succession should not be retroactive. In other words, a new state is not responsible for the acts of its predecessor state that occurred before the date of succession, unless it expressly agrees to assume such responsibility.
4. **Principle of pacta sunt servanda:** This Latin phrase, meaning "agreements must be kept," highlights the obligation of states to respect and honor their international commitments. In the context of sovereign debt, successor states are generally bound by the financial obligations of their predecessors to ensure the stability of the international financial system.

**Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) [Judgment, 1997]:** The ICJ dealt with the issue of state succession in the context of a treaty between Hungary and Czechoslovakia, which dissolved into the Czech Republic and Slovakia. The Court held that both successor states were bound by the treaty and were obliged to continue implementing it in good faith. This case highlights the principle of *pacta sunt servanda* in the context of state succession.

5. **Principle of equitable apportionment:** When it comes to dividing the assets and liabilities of a predecessor state, this principle calls for a fair and equitable distribution among successor states. The apportionment should take into account factors such as population, territory, and economic capacity.
6. **Principle of clean slate:** This principle is an exception to the general rule of continuity in the context of state succession. Under certain circumstances, a new state may be allowed to start with a "clean slate" and not inherit the debts and obligations of its predecessor. This typically applies in cases of decolonization or when a new state emerges after a prolonged period of oppression.
7. **Principle of good faith:** The principle of good faith underscores the importance of states acting in a transparent, honest, and fair manner during state succession and in the assumption of sovereign debt. This includes negotiating in good faith and fulfilling obligations in a timely manner.

**Case: Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) [Judgment, 1970]:**

Although not directly related to state succession, the ICJ's judgment in this case is relevant to sovereign debt issues. The ICJ determined that a state could not claim protection of its nationals' investments when the investment was made through a company incorporated in a third country. This case highlights the importance of the principle of good faith and the limits of diplomatic protection in the context of sovereign debt.

In conclusion, the principles of international law regarding state succession and sovereign debt are aimed at ensuring stability, fairness, and continuity in the international community. They help guide the transfer of rights and obligations among states and facilitate the peaceful resolution of potential disputes.

#### 4. Plea bargaining - Blood money or Usefull tool?

Plea bargaining can be seen as both a useful tool and as "blood money" in the criminal justice system. It is a controversial practice that involves negotiation between the prosecution and defense, where the accused agrees to plead guilty to a lesser charge or fewer charges in exchange for a more lenient sentence or other concessions. The practice has its roots in common law, and it has been adopted in many jurisdictions worldwide.

Plea bargaining in India was introduced through the Criminal Law (Amendment) Act, 2005, which amended the Code of Criminal Procedure, 1973 (CrPC). It added provisions under Section 265A-265L, regulating the practice of plea bargaining in the country. Although plea bargaining was initially met with skepticism, it has since become a useful tool in the Indian criminal justice system to expedite the resolution of cases and reduce the burden on the courts.

Some key legal provisions and court judgments relating to plea bargaining in India:

1. **Section 265A, CrPC:** This section states that plea bargaining is applicable to cases where the offense carries a maximum sentence of seven years' imprisonment. It is not applicable to cases involving offenses against women, children, socio-economic offenses, or those involving heinous crimes such as murder or rape.
2. **Section 265B, CrPC:** This section outlines the procedure for filing an application for plea bargaining. The accused must submit an application to the court, disclosing information about the case, and the prosecution and the accused must mutually agree on the terms of the plea bargain.
3. **Section 265C, CrPC:** The court is required to examine the accused in-camera to ensure that the plea bargain is voluntary and that the accused understands the consequences of entering into a plea agreement.
4. **Section 265D, CrPC:** This section mandates that the court must prepare a report outlining the facts of the case, the plea agreement, and the reasons for the agreement. The court then passes an order based on the report.

Court judgments:

1. **Kasambhai v. State of Gujarat (2008):** In this case, the Gujarat High Court held that the concept of plea bargaining is constitutionally valid and does not violate the principles of fairness, justice, or equality. The court observed that plea bargaining is a useful tool to reduce the backlog of cases and that it serves the interests of justice by allowing for the swift resolution of disputes.
2. **State of Uttar Pradesh v. Chandrika (2009):** The Supreme Court of India emphasized that plea bargaining should only be used in cases where the evidence is weak or doubtful and the accused is willing to plead guilty. The court cautioned against the indiscriminate use of plea bargaining, stating that it should not be applied in cases where there is strong evidence against the accused.
3. **Vinod Solanki v. Union of India (2008):** The Supreme Court of India observed that plea bargaining is not a tool for the police to extract confessions, and the court must ensure that the accused has entered the plea bargain voluntarily and with a full understanding of the implications.

Indian jurists hold varied opinions on the practice of plea bargaining. Some view it as a necessary and useful tool in the criminal justice system, while others criticize it for undermining the principles of justice and fair trial. Below are some perspectives from Indian jurists on plea bargaining:

#### 1. Supporters of plea bargaining:

- They argue that plea bargaining helps expedite the resolution of cases and reduces the burden on the courts, which is essential given the massive backlog of cases in the Indian legal system.
- Some jurists believe that plea bargaining can lead to a more efficient allocation of resources, as it can save time, effort, and money that would otherwise be spent on lengthy trials.
- They also assert that plea bargaining can be beneficial for the accused, as it can lead to reduced charges or lighter sentences in exchange for a guilty plea.

#### 2. Critics of plea bargaining:

- Some Indian jurists criticize plea bargaining as a form of "blood money," arguing that it can lead to a compromise of justice, as innocent people might be coerced into pleading guilty to avoid lengthy trials or the risk of harsher sentences.

- Critics also contend that plea bargaining can disproportionately benefit wealthier defendants, who can afford to negotiate better deals with the prosecution, leading to unequal treatment of defendants based on their financial means.
- Concerns have also been raised that plea bargaining might encourage corruption, as it can create opportunities for under-the-table deals between the prosecution, defense, and the judiciary.

## 4. Recent Significant Changes in Arbitration and Conciliation Act

The most recent significant changes to the Arbitration and Conciliation Act, 1996, were introduced through the Arbitration and Conciliation (Amendment) Act, 2015, and the Arbitration and Conciliation (Amendment) Act, 2019. These amendments aimed to make the arbitration process more efficient, time-bound, and cost-effective in India. Some key changes and concepts added to the Act are as follows:

1. **Time-bound arbitration process (Section 29A):** The 2015 Amendment introduced a 12-month time limit for the completion of arbitration proceedings, starting from the date of the constitution of the arbitral tribunal. This time limit can be extended by up to six months with the consent of the parties. If the award is not made within this timeframe, the mandate of the tribunal may be terminated. The 2019 Amendment relaxed this provision for international commercial arbitrations by excluding them from the 12-month time limit.
2. **Fast-track arbitration (Section 29B):** The 2015 Amendment introduced a fast-track arbitration procedure for parties who agree to resolve their disputes within six months. The fast-track arbitration process is based on written pleadings and documents, without oral hearings, unless deemed necessary by the tribunal.
3. **Interim measures by the arbitral tribunal (Section 17):** The 2015 Amendment enhanced the powers of the arbitral tribunal to grant interim measures, making the tribunal's orders enforceable in the same manner as a court order.
4. **Cost regime (Section 31A):** The 2015 Amendment introduced a comprehensive cost regime, requiring the arbitral tribunal to consider factors such as the conduct of the parties, the complexity of the dispute, and the reasonableness of the costs incurred while determining the costs of the arbitration.
5. **Disclosure by arbitrators (Section 12):** The 2015 Amendment introduced new disclosure requirements for arbitrators to ensure impartiality and independence. Arbitrators are required to disclose any circumstances that could raise doubts about their impartiality or independence in writing. The 2019 Amendment added a Schedule to the Act, providing a list of grounds that could give rise to justifiable doubts about an arbitrator's impartiality or independence.
6. **Grounds for setting aside an award (Section 34):** The 2015 Amendment narrowed the scope of public policy as a ground for setting aside an arbitral award, making it less susceptible to judicial intervention. The Amendment also provided detailed explanations for the terms "public policy of India" and "fundamental policy of Indian law."

7. **Confidentiality (Section 42A):** The 2019 Amendment introduced a new provision on confidentiality, requiring the arbitrator, the arbitral institution, and the parties to the arbitration agreement to maintain the confidentiality of all arbitral proceedings except for the arbitral award, in cases where it is necessary for its enforcement or challenge.
8. **Arbitration and Conciliation (Amendment) Ordinance, 2020:** This ordinance introduced an unconditional stay on the enforcement of arbitral awards if a court finds that a prima facie case is made out that the underlying arbitration agreement, contract, or the making of the award was induced or affected by fraud or corruption.

These recent changes and concepts added to the Arbitration and Conciliation Act, 1996, reflect the Indian government's commitment to making arbitration a more efficient and effective alternative dispute resolution mechanism in India.

## 6. Case of the week: Navtej Singh Johar v. Union of India (2018):

In the Navtej Singh Johar v. Union of India case, the Supreme Court of India delivered a landmark judgment decriminalizing consensual homosexual acts between adults. The Court held that Section 377 of the Indian Penal Code (IPC), which criminalized "carnal intercourse against the order of nature," violated the fundamental rights to equality, privacy, and dignity guaranteed under the Constitution.

The main aspects of the judgment are as follows:

1. **Right to equality and non-discrimination:** The Supreme Court held that Section 377, by criminalizing consensual homosexual acts, discriminated against individuals based on their sexual orientation. The Court emphasized that such discrimination violates the right to equality before the law and equal protection of the law guaranteed under Article 14 of the Constitution.
2. **Right to privacy:** The Court recognized the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution. It held that consensual sexual acts between adults in private are an essential aspect of an individual's right to privacy. By criminalizing consensual homosexual acts, Section 377 infringed upon the privacy rights of LGBTQ+ individuals.
3. **Right to dignity and autonomy:** The Supreme Court observed that Section 377 denied LGBTQ+ individuals the right to express their sexual orientation and make choices regarding their intimate relationships, violating their right to dignity and autonomy under Article 21. The Court emphasized that every individual has the right to lead a life of dignity and self-respect, regardless of their sexual orientation.
4. **Right to freedom of expression:** The Court also held that Section 377 infringed upon the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution. It ruled that the expression of one's sexual orientation is a fundamental aspect of self-expression, and criminalizing consensual homosexual acts impinged upon this right.

5. **Constitutional morality:** The Supreme Court stressed the importance of constitutional morality, which emphasizes the values of dignity, liberty, and equality enshrined in the Constitution. The Court held that societal morality cannot be used as a justification to violate the fundamental rights of LGBTQ+ individuals, as constitutional morality should always prevail over societal norms.

By decriminalizing consensual homosexual acts and emphasizing the fundamental rights of LGBTQ+ individuals, the Navtej Singh Johar judgment marked a significant advancement in LGBTQ+ rights in India. The Supreme Court's decision showcased the constitutionalism philosophy by ensuring that the government respects the fundamental rights of all individuals, irrespective of their sexual orientation, and adheres to the core principles of the Constitution.

## 7. Repeated PYQ Model Answer of the Week

### Q. Write A short Note on 'State Sponsored Terrorism'

State-sponsored terrorism refers to the involvement or support of a sovereign state in terrorist activities, either directly or indirectly, against other states, organizations, or individuals. In certain instances, it can involve the utilization of proxies or non-state actors to execute acts of violence in pursuit of the sponsoring state's strategic goals.

This phenomenon is a complex and contentious issue in the realm of international Law, as it obscures the distinction between traditional warfare and acts of terrorism. It presents substantial challenges to global security and the international legal framework, primarily due to the state's involvement, which complicates the process of holding responsible parties accountable and implementing effective countermeasures.

#### Objective of State

States may engage in sponsoring terrorism for several reasons:

1. Strategic objectives
2. Asymmetric warfare
3. Plausible deniability
4. Domestic political motivations

#### Legality Under international Law

Although there is no universally accepted definition of terrorism or state-sponsored terrorism, several principles and instruments within the international legal framework implicitly or explicitly prohibit such actions:

1. **Prohibition of the use of force:** Article 2(4) of the United Nations (UN) Charter prohibits the use of force by states against the territorial integrity or political independence of any state. State-sponsored terrorism often involves the use of force, directly or indirectly, against other states, thereby violating this fundamental principle of international law.
2. **Prohibition of intervention:** The principle of non-intervention, enshrined in the UN Charter and customary international law, prohibits states from interfering in the internal affairs of other states. State-sponsored terrorism often constitutes intervention in the internal affairs of the targeted state, as it typically aims to influence the political, social, or economic stability of that state.



3. **International humanitarian law:** State-sponsored terrorism may also violate international humanitarian law (IHL), which governs the conduct of armed conflict and seeks to protect civilians and non-combatants from harm. IHL prohibits acts of violence against civilians, indiscriminate attacks, and acts intended to spread terror among the civilian population, which are often characteristic of terrorist activities.

### Addressing Concerns

Addressing state-sponsored terrorism requires concerted efforts from the international community, including legal, diplomatic, and political measures to hold the responsible states accountable and to prevent further acts of terrorism.

It further necessitates a comprehensive approach that encompasses legal, diplomatic, and political measures, as well as robust international cooperation. Counterterrorism efforts must delicately balance the imperative to confront this threat while upholding the principles of state sovereignty and non-intervention, as enshrined in international law.

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

