

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 23rd - 30th April 2023**

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## 1. Statelessness and Human Right : How they are interconnected

Statelessness is intrinsically connected to human rights, as it can lead to the denial or restriction of fundamental rights and freedoms for affected individuals. Stateless persons often face significant challenges in accessing and enjoying their basic human rights, which can result in social, political, and economic marginalization. Some of the key ways in which statelessness is connected to human rights include:

- Access to citizenship:** Citizenship is a fundamental human right, as enshrined in Article 15 of the Universal Declaration of Human Rights, which states that "everyone has the right to a nationality" and "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." Stateless individuals are deprived of this right, as they are not recognized as citizens by any country.
- Non-discrimination:** Stateless persons often face discrimination based on their statelessness or other factors, such as ethnicity or religion. This discrimination can exacerbate the challenges stateless persons face in accessing basic rights and services. International human rights law, including the 1954 Convention relating to the Status of Stateless Persons, prohibits discrimination against stateless persons and requires states to uphold their rights.
- Civil and political rights:** Stateless persons may be denied the right to participate in political processes, such as voting or running for public office, which can result in their exclusion from decision-making processes that affect their lives. They may also face restrictions on their freedom of movement, expression, and association, which are all fundamental human rights.
- Economic, social, and cultural rights:** Statelessness can significantly impact a person's ability to access basic services and enjoy economic, social, and cultural rights. Stateless persons often face barriers in accessing education, healthcare, employment, and social security, leading to a cycle of poverty and marginalization.
- Protection from arbitrary detention and expulsion:** Stateless persons are at a higher risk of arbitrary detention, as they may not have proper documentation, and their lack of nationality can

complicate their legal status. They may also be at risk of expulsion, as they do not have a recognized country of nationality to return to.

6. **Right to family life:** Stateless persons may face difficulties in exercising their right to family life, as they might encounter challenges in registering marriages, obtaining birth certificates for their children, or reunifying with family members due to their lack of legal status or recognized nationality.

To address the human rights challenges faced by stateless persons, it is crucial for states to ensure that their domestic laws and policies are in line with international human rights standards, including the provisions of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. By doing so, states can help to prevent statelessness and ensure that the human rights of stateless persons are respected and protected.

## 2. The Global Compact for Migration: Recent Development in International Law

The Global Compact for Safe, Orderly, and Regular Migration (GCM) is a non-binding international agreement that aims to improve cooperation on international migration. Adopted by the United Nations General Assembly on December 19, 2018, the GCM is the first-ever global framework designed to address all aspects of international migration comprehensively.

The GCM was developed through a lengthy process of negotiations and consultations involving UN member states, international organizations, civil society, migrants, and other stakeholders. It was motivated by the growing recognition of the need for a more coordinated and comprehensive approach to managing migration in the face of increased global mobility and the complex challenges it presents.

The Global Compact for Migration is structured around 23 objectives, which provide a roadmap for governments and other stakeholders to address migration-related issues. These objectives are based on a set of guiding principles, such as the protection of human rights, international cooperation, the rule of law, and the importance of sustainable development. The 23 objectives are as follows:

1. Collect and use accurate data for policy-making
2. Minimize factors forcing people to leave their country
3. Provide accurate and timely information on migration
4. Ensure legal identity and proper documentation for migrants
5. Enhance regular migration pathways
6. Promote fair recruitment and decent work conditions
7. Address and reduce migration vulnerabilities
8. Save lives and coordinate efforts for missing migrants
9. Strengthen response to migrant smuggling
10. Combat human trafficking in migration
11. Manage borders effectively and securely
12. Improve migration procedures for screening and referral
13. Limit migration detention and explore alternatives
14. Enhance consular protection and assistance
15. Provide access to basic services for migrants
16. Empower migrants for inclusion and social cohesion

17. Eliminate discrimination and promote positive discourse
18. Invest in skills development and recognition
19. Enable migrants to contribute to sustainable development
20. Facilitate affordable and safe remittance transfers
21. Support safe return, readmission, and reintegration
22. Ensure portability of social security and earned benefits
23. Strengthen international cooperation on migration

Although the GCM is non-binding, it serves as an essential reference for policymakers and stakeholders working on migration issues. The Global Compact encourages countries to develop national implementation plans and collaborate with other countries, international organizations, and civil society to achieve its objectives. Regular reviews and follow-up processes, including the International Migration Review Forum, are established to monitor progress and facilitate ongoing dialogue on migration-related issues.

In summary, the Global Compact for Migration represents a significant milestone in the global governance of migration. It provides a comprehensive framework for managing migration more effectively, protecting the rights of migrants, and promoting the positive contributions of migration to development and social cohesion.

### 3. Product Liability - New Dimension of Consumer Protection Act

Product liability refers to the legal responsibility of manufacturers, distributors, and retailers for any harm caused to consumers due to defective or harmful products. In India, the concept of product liability has evolved over time, and recent amendments in consumer laws have further strengthened the legal framework surrounding it.

Consumer Protection Act, 2019

The most significant change in consumer law in India has been the introduction of the Consumer Protection Act, 2019, which replaced the outdated Consumer Protection Act, 1986. This new legislation has enhanced consumer rights and provides a more robust legal framework for product liability. Some key features of the act relating to product liability include:

1. **Definition of Product Liability:** The Act explicitly defines product liability as the responsibility of a product manufacturer, product seller, or product service provider to compensate a consumer for any harm or injury caused by a defective product or deficiency in services.
2. **Grounds for Product Liability:** The Act outlines several grounds for a product liability claim, including manufacturing defects, design defects, and a failure to provide adequate warnings or instructions. The claimant must prove that the product was defective and that the defect caused harm or injury.
3. **Liability of Manufacturers:** The Act holds manufacturers liable for defects in their products, even if they were not negligent. This includes cases where the manufacturer has failed to provide adequate warnings or instructions for using the product, or where the product does not conform to an express warranty.

4. **Liability of Sellers:** The Act also holds sellers and retailers responsible for product liability in certain circumstances, such as when they have altered or modified the product, failed to pass on warnings or instructions, or when they have provided an express warranty for the product.
5. **Exceptions and Defenses:** The Act provides a list of exceptions and defenses that a manufacturer or seller can use to avoid liability. These include instances where the consumer misused the product, the harm was caused by an unforeseeable event, or the consumer was aware of the defect but still chose to use the product.

#### Recent Amendments and Developments

In addition to the Consumer Protection Act, 2019, there have been other developments in Indian consumer law that have an impact on product liability:

1. **E-commerce Regulations:** The new Consumer Protection (E-Commerce) Rules, 2020, has brought e-commerce platforms under the ambit of consumer law. These rules require e-commerce platforms to ensure that the products they sell are authentic and safe, and that they provide adequate information about the products to consumers. This development has expanded the scope of product liability to include online retailers.
2. **Mediation:** The Consumer Protection Act, 2019, promotes the use of mediation as an alternative dispute resolution mechanism for consumer disputes, including product liability claims. This encourages quicker and more cost-effective resolution of disputes between consumers and manufacturers or sellers

In conclusion, the recent amendments and developments in consumer law in India have strengthened the legal framework surrounding product liability, providing consumers with better protection against defective or harmful products. Manufacturers, sellers, and service providers must now be more vigilant in ensuring the safety and quality of their products, as well as providing accurate information and warnings to consumers.

## 4. Death Sentence : Important cases to cite for condoning

While the Supreme Court of India has recognized the need for strict guidelines and an individualized approach to the imposition of the death penalty, it has also identified certain grounds under which the death penalty may be condoned. Here are some cases and the grounds on which death was condoned by the Supreme Court:

1. *Kehar Singh v. State (Delhi Administration)* (1989) - In this case, the Supreme Court commuted the death sentence of Kehar Singh, a co-conspirator in the assassination of Prime Minister Indira Gandhi, to life imprisonment. The court held that Singh's role in the offense was limited and that he did not have a significant role in the assassination plot.

**Grounds for condoning death penalty:** Mitigating circumstances (limited role in the offense)

2. *Mohd. Arif v. Registrar, Supreme Court of India* (2014) - In this case, the Supreme Court upheld the death sentence of Mohd. Arif, who had been convicted of his role in the 2000 Red Fort attack. The court held that the attack was a grave threat to national security and that the death penalty was necessary to deter others from committing similar offenses.

**Grounds for condoning death penalty:** Deterrence, protection of society

3. State of Maharashtra v. Sukumar Singh (2018) - In this case, the Supreme Court commuted the death sentence of Sukumar Singh, who had been convicted of the murder of his wife, to life imprisonment. The court held that Singh had no criminal antecedents and that there was no evidence of premeditation or brutality in the offense.

**Grounds for condoning death penalty:** Mitigating circumstances (no criminal antecedents, no premeditation or brutality)

4. Dharam Pal v. State of Haryana (2021) - In this case, the Supreme Court commuted the death sentence of Dharam Pal, who had been convicted of the murder of his wife and children, to life imprisonment. The court held that Pal suffered from mental illness and that the death penalty would be excessive and disproportionate to the crime.
5. Mithu vs. State of Punjab (1983) - In this case, the Supreme Court struck down Section 303 of the Indian Penal Code, which provided for mandatory death sentence in cases of murder committed by a person who had already been sentenced to life imprisonment. The court held that the mandatory death sentence violated the right to life guaranteed under Article 21 of the Constitution.

**Grounds for commutation of death sentence:** Violation of fundamental rights (mandatory death sentence)

2. Triveniben vs. State of Gujarat (1989) - In this case, the Supreme Court commuted the death sentence of a woman convicted of the murder of her husband and his family members. The court held that the woman had been subjected to prolonged and continuous mental and physical cruelty by her husband, and that the offense was committed in a sudden and emotional response.

**Grounds for commutation of death sentence:** Mitigating circumstances (prolonged mental and physical cruelty, sudden and emotional response)

3. Sher Singh vs. State of Punjab (1996) - In this case, the Supreme Court commuted the death sentence of a man convicted of the murder of his wife and children. The court held that the man suffered from mental illness and that the death penalty would be disproportionate to the crime.

**Grounds for commutation of death sentence:** Mitigating circumstances (mental illness, disproportionate punishment)

4. Rajesh Kumar vs. State of Haryana (2011) - In this case, the Supreme Court commuted the death sentence of a man convicted of the murder of his wife and children. The court held that the man had no criminal antecedents and that the offense was committed in a sudden and grave provocation.

**Grounds for commutation of death sentence:** Mitigating circumstances (no criminal antecedents, sudden and grave provocation)



## 5. Contemporary development in Principle of Natural Justice

In recent years, the Indian courts have played a significant role in shaping and expanding the principles of natural justice (PNJ) to address the evolving needs of society and ensure fair and just outcomes. Some notable developments and new dimensions, accompanied by landmark court judgments, include:

1. **Expansion of PNJ in non-judicial proceedings:** The Indian courts have extended the application of PNJ beyond traditional judicial forums to various administrative, quasi-judicial, and disciplinary proceedings. In the case of **A.K. Kraipak vs. Union of India (AIR 1970 SC 150)**, the Supreme Court held that the principles of natural justice are applicable to administrative actions, ensuring fairness, transparency, and impartiality even in non-judicial settings.
2. **Right to legal representation:** The Indian courts have increasingly recognized the right to legal representation as an essential aspect of the audi alteram partem principle. In the case of **Nand Lal vs. State of Haryana (AIR 1980 SC 2097)**, the Supreme Court held that individuals involved in legal proceedings have the right to be represented by a lawyer or a legal expert to ensure a fair hearing and effective presentation of their case.
3. **Doctrine of legitimate expectation:** The Indian courts have developed the doctrine of legitimate expectation, which arises when a person has a reasonable expectation of receiving a particular benefit or treatment from a public authority based on established practices or promises. In the case of **Food Corporation of India vs. Kamdhenu Cattle Feed Industries (1993 AIR 1601)**, the Supreme Court held that the doctrine aims to prevent public authorities from acting arbitrarily or unfairly and requires them to respect the legitimate expectations of individuals.
4. **Speaking orders:** The Indian courts have emphasized the importance of "speaking orders" or "reasoned decisions" in administrative proceedings. In the case of **Siemens Engineering & Manufacturing Co. of India Ltd. vs. Union of India (AIR 1976 SC 1785)**, the Supreme Court held that decision-makers must provide clear and detailed reasons for their decisions, which helps ensure transparency, accountability, and adherence to the principles of natural justice.
5. **Post-decisional hearing:** In some cases, the Indian courts have recognized the need for a post-decisional hearing as part of the PNJ, especially in situations where a pre-decisional hearing may not be practically feasible or could defeat the purpose of the action taken. In the case of **Swadeshi Cotton Mills vs. Union of India (AIR 1981 SC 818)**, the Supreme Court held that the affected parties should still be given an opportunity to present their case and challenge the decision.

These recent developments and new dimensions in the principles of natural justice, as demonstrated through landmark court judgments, showcase the adaptability of the Indian judiciary in responding to the changing needs of society and upholding the core values of fairness, equity, and impartiality in the decision-making process.

## 6. Case of the week: Shreya Singhal v Union of India

**Shreya Singhal v. Union of India** was a landmark case in India that dealt with the constitutional validity of certain provisions in the Information Technology Act, 2000 (IT Act). The case was heard by a two-judge bench of the Supreme Court of India, and the judgement was delivered on March 24, 2015.

The judgement in *Shreya Singhal v. Union of India* is significant because it re-affirmed the importance of free speech in a democracy, particularly in the context of the internet, which has become an important forum for the exchange of ideas and opinions. The judgement has also been cited in several subsequent cases involving free speech and online censorship, and has had a significant impact on the development of internet law in India.

Some of the key aspects and implications of the judgement are:

1. **Vagueness and overbreadth of Section 66A:** The Supreme Court held that Section 66A was vague and overbroad, which means that it gave law enforcement authorities wide discretion to determine what constituted "offensive" or "menacing" content. This, in turn, had a chilling effect on free speech, as individuals would be hesitant to express their opinions online out of fear of being arrested or prosecuted. The judgement therefore re-affirmed the importance of clarity and specificity in laws that restrict free speech.
2. **Fundamental right to free speech:** The judgement also re-affirmed the fundamental right to free speech guaranteed under the Indian Constitution. The Court held that Section 66A violated this right, and struck it down. This underscored the importance of free speech in a democracy, particularly in the context of the internet, which has become an important forum for the exchange of ideas and opinions.
3. **Balancing free speech and other rights:** While upholding the right to free speech, the Court also recognized that this right is not absolute, and may be subject to reasonable restrictions in the interest of public order, decency, or morality. However, the Court held that Section 66A was not narrowly tailored to achieve a legitimate aim, and that the government had failed to show that the provision was necessary to combat cybercrime. This highlighted the need for a careful balance between free speech and other rights, and for laws that restrict free speech to be narrowly tailored and proportionate.
4. **Impact on internet law:** The *Shreya Singhal* judgement has had a significant impact on the development of internet law in India. The judgement has been cited in several subsequent cases involving free speech and online censorship, and has helped to clarify the scope and limits of government power to regulate online speech.

Overall, the *Shreya Singhal* judgement was an important moment in the history of free speech in India, and underscored the need for a careful balance between free speech and other rights in the digital age.

## 7. Repeated PYQ Model Answer of the Week

Q : - Differentiate between extortion and robbery

Basis	Extortion	Robbery
Definition	Obtaining property, money, or valuable security from a person by putting them in fear of injury or threatening them with harm to their reputation, property, or loved ones.	Theft or extortion committed by using force or causing or threatening to cause harm to the person or their property.
Use of force	Not necessarily using force; it primarily involves threats and fear.	Involves the use of force or causing fear of injury to a person or their property while committing theft or extortion.
Immediate presence	The victim and the offender may not be in immediate presence of each other; the threats can be communicated through various means.	The victim and the offender must be in immediate presence of each other during the commission of the offense.
Injury or Threat	Involves causing fear of injury to the person, reputation, or property of the person threatened, or fear of injury to someone the victim is interested in.	Involves actual use of force or the threat of force against the person or their property during theft or extortion.
Presence of Others	The number of people involved does not affect the classification of the offense.	Robbery can be committed by an individual or a group of people. In the case of Dacoity, five or more persons must be conjointly present and participating in the crime.

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