

# Weekly Update for Law optional UPSC

A mix of Conceptual, Current/Contemporary Topics

**Date: 2nd - 8th April 2023**

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## 1. Right to Internet access and Constitution of India

Under the Constitution of India, the right to access the internet is not explicitly mentioned as a fundamental right. However, the Indian judiciary has recognized the right to access the internet as a fundamental right that is implicit in other fundamental rights guaranteed by the Constitution.

The Supreme Court of India has recognized the right to access the internet as a fundamental right under Article 19(1)(a) and Article 21 (right to life and personal liberty) of the Constitution of India. The Court has held that the right to access the internet is essential for the exercise of the right to freedom of speech and expression and the right to receive and impart information.

In the landmark case of **Anuradha Bhasin v. Union of India (2020)**, the Supreme Court held that the right to access the internet is a fundamental right under Article 19(1)(a) and Article 21 of the Constitution. The Court held that any restrictions on internet access must be necessary and proportionate, and the government's actions in imposing restrictions on internet services in Jammu and Kashmir were not in line with the principles of proportionality and reasonableness.

In another case, the Supreme Court has held that the right to access the internet is an integral part of the right to education. In the case of **Faheema Shirin R.K v. State of Kerala (2019)**, the Court held that the right to access the internet is necessary for students to access educational resources and that any restrictions on internet access could impede a student's right to education.

Overall, the Supreme Court of India has consistently recognized the importance of the right to access the internet as a fundamental right and has emphasized the need for proportionality and reasonableness in imposing restrictions on internet access.

## 2. Role of International Tribunal for the Law of the Sea for protecting environment

The International Tribunal for the Law of the Sea (ITLOS) is an independent judicial body established by the United Nations Convention on the Law of the Sea (UNCLOS) to settle disputes related to the interpretation and application of UNCLOS. ITLOS plays an important role in protecting the environment by adjudicating cases related to the conservation and sustainable use of marine resources, pollution of the marine environment, and other environmental issues.

One of the main functions of ITLOS is to hear disputes related to the conservation and management of living resources in the exclusive economic zone (EEZ) and on the continental shelf. For example, in the case of **Barbados v. Trinidad and Tobago (2006)**, the tribunal heard a dispute over the management of fisheries in the disputed area between the two countries. The tribunal ruled that both parties had a duty to cooperate in the management of the fisheries and to ensure the conservation and sustainable use of the resources.

ITLOS also plays a role in addressing pollution of the marine environment. The tribunal has jurisdiction to hear cases related to the interpretation and application of UNCLOS and other international agreements related to the protection of the marine environment. For example, in the case of **The "Chiswick" (Germany v. France) (1990)**, the tribunal heard a dispute related to the discharge of radioactive waste from a German vessel into the English Channel. The tribunal ruled that the discharge of the waste constituted a violation of international law and ordered Germany to pay compensation to France.

In addition to adjudicating disputes related to the marine environment, ITLOS also plays a role in promoting cooperation and collaboration among states for the protection of the marine environment. The tribunal has the power to give advisory opinions on legal questions related to UNCLOS, which can provide guidance to states on issues related to the protection of the marine environment.

Overall, the International Tribunal for the Law of the Sea plays an important role in protecting the environment by adjudicating disputes related to the conservation and sustainable use of marine resources, pollution of the marine environment, and other environmental issues, and by promoting cooperation and collaboration among states for the protection of the marine environment.

## 3. Mens Rea and Different Offenses under IPC

Mens rea, or the mental element of a crime, is an essential component of criminal liability under the Indian Penal Code (IPC). The Supreme Court of India has delivered several judgments on the interpretation and application of the mens rea requirement under the IPC. Here are some of the major judgments:

1. **Bhagat Ram v. State of Punjab (1954)**: In this case, the Supreme Court held that a person can be held liable for an offense only if there is mens rea or a guilty mind. The Court observed that the burden of proving mens rea lies on the prosecution, and that the mens rea must be proved in each case.
2. **V.C. Shukla v. State (1980)**: In this case, the Supreme Court held that mens rea is an essential ingredient of the offense of criminal conspiracy under Section 120B of the IPC. The Court observed

that the mens rea required for the offense of conspiracy is the intention to agree to commit a criminal act.

3. **Hardeep Singh v. State of Punjab (2014)**: In this case, the Supreme Court held that the mens rea requirement under Section 304B of the IPC (dowry death) is the intention or knowledge that the woman was subjected to cruelty or harassment for dowry. The Court observed that the mens rea requirement for dowry death is distinct from that of murder or culpable homicide, and that the prosecution must prove that the accused had the necessary intention or knowledge to commit the offense.
4. **Sushil Kumar Sharma v. Union of India (2005)**: In this case, the Supreme Court held that the mens rea requirement under Section 498A of the IPC (cruelty by husband or his relatives to married woman) is the intention or knowledge of the accused that his conduct is likely to cause cruelty to the woman. The Court observed that the mens rea requirement for cruelty is subjective, and that the prosecution must prove that the accused had the necessary intention or knowledge to commit the offense.

These are some of the major judgments delivered by the Supreme Court of India on the mens rea requirement under the IPC. The Court has emphasized that the mens rea requirement is an essential component of criminal liability, and that the prosecution must prove the necessary mental element in each case.

## 4. Parliamentary privilege - An contentious issue

The issue of parliamentary privileges has indeed been a contentious issue between the Parliament and the judiciary in India. Parliamentary privileges are a set of powers, immunities, and rights that are granted to Parliament and its members to enable them to carry out their functions effectively. These privileges include the freedom of speech and expression in Parliament, the right to publish and republish proceedings of Parliament, the power to regulate its own proceedings, and the power to punish for contempt of Parliament.

However, the exercise of parliamentary privileges has often come into conflict with the fundamental rights guaranteed by the Constitution of India and the powers of the judiciary to interpret and enforce those rights. The Supreme Court of India has been called upon to adjudicate on several cases involving the exercise of parliamentary privileges and the limits of those privileges.

One of the most prominent cases in this regard is the case of **Keshav Singh v. Speaker, Legislative Assembly, Uttar Pradesh (1965)**, in which the Supreme Court held that parliamentary privileges cannot be used to override the fundamental rights guaranteed by the Constitution. The Court observed that the powers and privileges of Parliament are subject to the constitutional limitations and that the courts have the power to review and examine the exercise of those powers.

Another notable case is the case of **S. R. Bommai v. Union of India (1994)**, in which the Supreme Court held that the exercise of parliamentary privileges cannot be used to subvert the democratic process and that the courts have the power to intervene to protect the constitutional order. The Court observed that the exercise of parliamentary privileges must be consistent with the principles of democracy, secularism, and federalism enshrined in the Constitution.

In recent years, there have been several cases in which the exercise of parliamentary privileges has been challenged in the courts. For example, in the case of **Prashant Bhushan v. Rajya Sabha Secretariat (2021)**, the Supreme Court held that the power of Parliament to punish for contempt must be exercised with caution and in accordance with the principles of natural justice.

In conclusion, while parliamentary privileges are an important aspect of the functioning of democracy, the exercise of those privileges must be consistent with the constitutional order and the fundamental rights guaranteed by the Constitution. The Supreme Court of India has played a crucial role in adjudicating on cases involving the exercise of parliamentary privileges and ensuring that those privileges are exercised within the constitutional framework.

## 5. e-Commerce and Consumer protection in India

E-commerce has brought about significant changes in the way businesses operate and consumers shop. While e-commerce has made shopping more convenient and accessible, it has also raised concerns about consumer protection in India. The following are some of the ways in which e-commerce has adversely affected consumer protection:

1. **Lack of physical presence:** Unlike brick-and-mortar stores, e-commerce platforms operate in a virtual environment, which makes it difficult for consumers to verify the quality and authenticity of the products. This has given rise to concerns about counterfeit products, substandard goods, and fraudulent practices.
2. **Information asymmetry:** E-commerce platforms have access to a wealth of consumer data, which they can use to tailor their marketing and sales strategies. However, this also creates an imbalance of power between the seller and the consumer, as the consumer may not have access to the same level of information about the product or the seller.
3. **Limited liability:** E-commerce platforms often act as intermediaries between the seller and the consumer, which raises questions about their liability in case of disputes or fraudulent practices. In some cases, e-commerce platforms may claim to be mere facilitators and deny responsibility for any harm caused to the consumer.
4. **Inadequate redressal mechanisms:** E-commerce platforms often have their own dispute resolution mechanisms, which may not be transparent, effective, or impartial. This can leave consumers with limited options for seeking redressal in case of grievances.
5. **Cross-border transactions:** E-commerce has enabled consumers to shop from foreign websites and sellers, which raises questions about jurisdiction, applicable laws, and dispute resolution mechanisms. This can create confusion and uncertainty for consumers who may not be familiar with the legal framework governing cross-border transactions.

In conclusion, e-commerce has brought about significant changes in the consumer landscape in India, but it has also raised concerns about consumer protection. The government, regulators, and e-commerce platforms need to work together to address these concerns and ensure that consumers are adequately protected in the e-commerce ecosystem. This can be achieved through the development of robust consumer protection laws, effective enforcement mechanisms, and transparent dispute resolution mechanisms that prioritize the interests of the consumer.

## 6. False Imprisonment - Psychological or physical or Both?

The tort of false imprisonment refers to the intentional and unlawful confinement of a person without their consent. While physical confinement is an essential element of the tort, psychological boundaries can also be sufficient to constitute false imprisonment in some circumstances.

In the Indian legal system, the tort of false imprisonment is recognized and protected under the Indian Contract Act, 1872, and the Indian Penal Code, 1860. Section 340 of the Indian Penal Code defines false imprisonment as intentionally restraining a person without lawful justification. The Indian courts have recognized that false imprisonment can occur even in the absence of physical barriers or restraints.

For instance, in the case of **Om Prakash v. State of Rajasthan (1995)**, the Supreme Court of India held that the essential ingredients of false imprisonment are the intentional and unlawful confinement of a person without his/her consent. The Court observed that the use of force or the imposition of psychological restraints, such as threats or coercion, could also amount to false imprisonment.

Similarly, in the case of **Kishore Singh Ravinder Dev v. State of Rajasthan (2010)**, the Supreme Court held that false imprisonment could be established where a person is subjected to mental or psychological pressure, which results in their confinement against their will.

However, in India, the courts have emphasized that the confinement must be intentional and unlawful to constitute false imprisonment. If the confinement is lawful and justifiable under the law, it may not amount to false imprisonment. For example, if a person is detained by the police under a lawful arrest or detention, it may not amount to false imprisonment.

In conclusion, the Indian legal system recognizes and protects the tort of false imprisonment. While physical confinement is an essential element of the tort, the use of psychological boundaries, such as threats or coercion, can also amount to false imprisonment in some circumstances. However, the confinement must be intentional and unlawful to constitute false imprisonment in India.

## 7. Differentiating Extortion and Criminal Intimidation under IPC

Extortion and criminal intimidation are two distinct offenses under the Indian Penal Code (IPC). While both offenses involve the use of coercion or threat to obtain something from another person, there are some key differences between the two offenses.

The offense of extortion is defined under Section 383 of the IPC. According to this provision, extortion is committed when a person intentionally puts another person in fear of injury to that person or to any other person, in order to dishonestly induce that person to deliver any property or valuable security or to do or omit to do something that is illegal. In other words, extortion involves the use of force or threat to obtain property or any other valuable thing from another person.

On the other hand, criminal intimidation is defined under Section 506 of the IPC. According to this provision, criminal intimidation is committed when a person intentionally causes another person to fear the commission of any offense, or to believe that he will be injured or harmed in his property, reputation or



body, in order to compel that person to do something that is illegal or to omit to do something that is legal. In other words, criminal intimidation involves the use of force or threat to compel another person to do or not do something, which is illegal.

The key difference between extortion and criminal intimidation is that extortion involves the use of coercion to obtain property or something of value from another person, while criminal intimidation involves the use of coercion to compel another person to do or not do something that is illegal. In extortion, the person making the threat seeks to obtain property or something of value from the victim, while in criminal intimidation, the person making the threat seeks to compel the victim to do or not do something that is illegal.

**State of Maharashtra v. Mohd. Yakub (2008):** In this case, the Supreme Court held that the key difference between extortion and criminal intimidation was the nature of the act that the offender sought to obtain from the victim through the use of coercion. The Court observed that extortion involved the use of force or fear to obtain property or something of value from the victim, while criminal intimidation involved the use of force or fear to compel the victim to do or not do something that is illegal.

**State of Maharashtra v. Suresh (2000):** In this case, the Supreme Court held that the essential ingredient of extortion was the use of force or fear to obtain property or valuable security from the victim, while criminal intimidation required the use of force or fear to compel the victim to do or not do something that is illegal. The Court observed that the two offenses were distinct, and that the prosecution must prove each ingredient of the offense independently.

In conclusion, while both extortion and criminal intimidation involve the use of coercion or threat, they are distinct offenses under the Indian Penal Code. The main difference between the two offenses is the nature of the act that the offender seeks to obtain from the victim through the use of coercion.

## 8. Recent Development in International environmental law

International environmental law is an area of law that deals with the protection of the environment and natural resources at the international level. In recent years, there have been several developments in this area of law, some of which are as follows:

1. **Paris Agreement on Climate Change:** In 2015, 196 countries signed the Paris Agreement, which is a legally binding agreement under the United Nations Framework Convention on Climate Change (UNFCCC). The Agreement aims to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. It also aims to enhance the ability of countries to deal with the impacts of climate change and to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
2. **Biodiversity Protection:** The Convention on Biological Diversity (CBD) is an international agreement that aims to conserve biodiversity, promote its sustainable use, and ensure the fair and equitable sharing of the benefits arising from the use of genetic resources. In 2020, the 15th meeting of the Conference of the Parties to the CBD was held in Kunming, China, where a new framework was adopted for the period 2021-2030, known as the Post-2020 Global Biodiversity

Framework. The framework aims to halt the loss of biodiversity and to restore ecosystems, with a focus on mainstreaming biodiversity into policies and practices across sectors and at all levels.

3. **Marine Pollution:** The United Nations Convention on the Law of the Sea (UNCLOS) is an international agreement that sets out the legal framework for the use of the oceans and their resources. In recent years, there has been an increasing focus on marine pollution and the need to protect the marine environment. In 2021, the International Maritime Organization (IMO) adopted new regulations to reduce greenhouse gas emissions from international shipping. The regulations aim to reduce the carbon intensity of shipping by at least 40% by 2030, compared to 2008 levels.
4. **Environmental Impact Assessment:** Environmental Impact Assessment (EIA) is a process of evaluating the potential environmental impacts of a proposed project or development. In recent years, there has been an increasing focus on the need to improve the EIA process and to ensure that it is more effective in protecting the environment. In 2020, the United Nations Environment Programme (UNEP) published a report on EIA best practices, which aims to provide guidance to countries on how to improve their EIA processes.

In conclusion, there have been several recent developments in international environmental law, including the Paris Agreement on Climate Change, the Post-2020 Global Biodiversity Framework, the new regulations to reduce greenhouse gas emissions from international shipping, and the report on EIA best practices. These developments highlight the growing importance of protecting the environment and natural resources at the international level, and the need for stronger international cooperation and collaboration to address environmental challenges.

## 9. Nine Dash line in South China Sea - Legality under international Law

The South China Sea Arbitration is a landmark case that was brought before an arbitral tribunal in The Hague, Netherlands, by the Philippines against China. The case concerned disputes over the maritime boundaries and sovereignty over certain islands in the South China Sea. The tribunal's ruling, which was issued on July 12, 2016, was widely seen as a victory for the Philippines and a setback for China.

The main issues in the case were China's claims to historic rights over the waters within the "nine-dash line," which is a demarcation line that China uses to assert its territorial claims over much of the South China Sea. The tribunal was asked to rule on whether these claims were consistent with international law, including the United Nations Convention on the Law of the Sea (UNCLOS).

In its ruling, the tribunal held that China's claims to historic rights over the waters within the nine-dash line did not have a basis in international law. The tribunal held that China had not shown that it had historically exercised exclusive control over the waters within the nine-dash line, and that there was no evidence of general acceptance of the claim. The tribunal also held that China's construction of artificial islands and installations in the South China Sea violated its obligations under UNCLOS.

The ruling was significant because it clarified the legal basis for territorial claims and activities in the South China Sea. The ruling also affirmed the importance of UNCLOS as the primary framework for resolving disputes over maritime boundaries and territorial sovereignty.

China rejected the ruling and stated that it had no legal effect. However, the ruling was widely seen as a victory for the Philippines and a blow to China's claims in the region. The ruling also highlighted the importance of peaceful resolution of disputes and adherence to international law in resolving territorial disputes.

## 10. Intervention under UN Charter

Intervention under the UN Charter refers to the use of military force or other forms of intervention in the affairs of another state. The UN Charter generally prohibits intervention in the affairs of another state, except in cases of self-defense or with the authorization of the UN Security Council.

Article 2(4) of the UN Charter states that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." This provision is intended to promote respect for state sovereignty and prevent the use of force in international relations.

However, the UN Charter also recognizes the right of states to self-defense. Article 51 of the UN Charter states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations." This provision recognizes that states have the right to use force to defend themselves against an armed attack.

In addition, the UN Security Council can authorize the use of force under Chapter VII of the UN Charter. Article 42 of the UN Charter states that "Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."

The authorization of the use of force by the UN Security Council is intended to ensure that any intervention in the affairs of another state is carried out in accordance with the principles of the UN Charter and with the aim of maintaining international peace and security.

It is important to note that intervention under the UN Charter is a controversial issue, and there are differing views on the circumstances in which intervention is justified. Some argue that intervention is necessary to protect human rights and prevent atrocities, while others argue that intervention undermines state sovereignty and can lead to unintended consequences. The use of force in international relations is a complex and sensitive issue that requires careful consideration and respect for the principles of the UN Charter.

The following are some recent examples of intervention under the UN Charter:

1. Libya (2011): In 2011, a coalition of countries led by the United States, France, and the United Kingdom intervened in the conflict in Libya. The intervention was authorized by UN Security Council Resolution 1973, which authorized member states to take all necessary measures to protect civilians and civilian-populated areas under threat of attack in Libya.
2. Mali (2013): In 2013, France intervened in Mali to support the Malian government in its fight against Islamist rebels. The intervention was authorized by UN Security Council Resolution 2085, which



authorized member states to take all necessary measures to support the Malian government in its efforts to restore security and stability.

3. Iraq (2014): In 2014, a coalition of countries led by the United States intervened in Iraq to combat the threat posed by the Islamic State of Iraq and Syria (ISIS). The intervention was not authorized by the UN Security Council, but was carried out with the consent of the Iraqi government.
4. Syria (2015): In 2015, a coalition of countries led by the United States began carrying out air strikes against ISIS targets in Syria. The intervention was not authorized by the UN Security Council, but was carried out with the consent of the Syrian government.
5. Yemen (2015): In 2015, a coalition of countries led by Saudi Arabia intervened in Yemen to support the Yemeni government in its fight against Houthi rebels. The intervention was not authorized by the UN Security Council, but was carried out with the support of several Gulf countries.

