90 Days UPSC Mains Optional Answer Writing Initiative

Law – Paper 1

Question and Model Answers from Subject Experts
12-Nov-2018 - Question 1


Model Answer

Secularism is one of the essential features of the Indian constitution, and the Constitution doesn’t acquire its secular character merely from the word “Secular” inserted by the 42nd Amendment, 1976 in the Preamble, but from a collective reading of many of its provisions such as the various fundamental rights (Articles 25 to 28 guarantee individuals as well as groups the right to freedom of religion) and important cases decided on this concept.

• The Supreme Court expressed its views on the secular nature of the Constitution for the first time in Sardar Taheruddin Syedna Saheb v. the State of Bombay.

• In Keshavananda Bharati v. the State of Kerala, the Supreme Court in uncertain terms reiterated that secularism was a part of the basic structure of the Constitution.

• But it was in the landmark judgment of S.R. Bommai v. Union of India the Court in no uncertain terms declared that secularism is part of the basic structure.

In India, Secularism is a positive concept of equal treatment of all religions different from the western concept of true separation of religion and the state and to the state, the religion, faith or belief of a person is immaterial and all are equal and are entitled to be treated equally.
12-Nov-2018 - Question 2

Write a critical note on: Whether Law relating to preventive detention can be challenged for violation of Article 19? (2013) - 250 Words (15 Marks)

Model Answer

Preventive Detention means detention of a person without trial and conviction by a court, merely on suspicion in the mind of an executive authority as given under Article 22 (5).

A law relating to Preventive Detention can be enacted by both Parliament (Entry 9, List I and Entry 3, List III) as well as state legislatures (Entry 3, List III), and parliament has enacted laws such as the National Security Act, 1980 among others while state legislatures have enacted their own laws authorising preventive detention for various purposes.

- In Haradhan Saha and Another vs State of West Bengal and Ors. The apex court rejected the contention of invalidity of The Maintenance of Internal Security Act for violating Article 19 as it was of the opinion that the Constitution has conferred rights under Article 19 and also adopted preventive detention to prevent the greater evil of elements imperilling the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence under Article 19 (2) – (6).

- In AK Roy vs Union of India, the validity of National Security Act came up, where the court once again upheld the validity of the act on the same reasons.

The Court in both the cases has held that Laws can be challenged on the question of the reasonableness of the powers exercised by the executive authority for the action of “Preventive Detention” but not on the validity of the laws providing for “Preventive detention”.

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14-Nov-2018 - Question 1

Examine and Elucidate the constitutional scope of the Ordinance making power of the President and the Governors in India? (2014) - 300 Words (20 Marks)

Model Answer

The Central executive (President), as well as State Executive (Governor), have the power to issue ordinances and thus promulgate laws for a short duration. It has been devised with a view to enabling the Executive to meet any unforeseen or urgent situation arising in the country when Parliament or State Legislative Council is not in session, and which it can not deal with under the ordinary law.

• The Constitution makes provisions to invest the President (Under Article 123) and Governor (Under Article 213) to promulgate an ordinance.

• An ordinance is only a temporary law and the power to issue an ordinance is a legislative power.

• An ordinance is promulgated in the name of President/Governor but they act in this matter, on the advice of the Council of Ministers (Parliament/State Legislature).

• There is no inhibition on the ordinance making power that it shall not deal with a matter already covered by a law made by parliament/state legislature.

• There is no difference between an ordinance and an act passed by the parliament/state legislature but an ordinance has to be placed before both houses (Parliament) or one house/both houses as the case may be for state legislature within six weeks of its promulgation. If two houses assemble on two different dates, the period of six weeks is to be counted from the later of two dates.

• The ordinance comes into effect as soon as it is promulgated. If later the ordinance comes to an end for any reason, the ordinance doesn’t become void ab initio. It was valid when promulgated and whatever transactions have been completed under the ordinance cannot be reopened when the ordinance comes to an end.
• An ordinance comes to an end in the following situations-
  - A resolution disapproving the ordinance is passed by both houses of Parliament/State Legislature (as the case may be).
  - If the ordinance is not replaced by an act within the stipulated period.
  - The executive lets it lapse without bringing it before the Houses of Parliament/State Legislature.
  - If it is withdrawn by the Government at any time.
14-Nov-2018 - Question 2

What is "Public Interest Litigation"? What are the major facets of this form of litigation? Also discuss the limitations of this type of litigation. (2014) - 250 Words (15 Marks)

Model Answer

Public Interest Litigations concern filing of writ petition either in Supreme Court (Article 32) for enforcement of Fundamental Rights or in High Court (Article 226) for enforcement of Fundamental as well as other legal rights for “public interest” cause.

The origin of Public Interest Litigation can be traced back to cases of Hussainara Khatoon v. the State of Bihar (1972) and PUDR vs Union of India (1982), but it got a comprehensive exposition in S.P. Gupta V. Union of India (1982) under Justice P.N Bhagwati.

Important facets of Public Interest Litigation are –

• It is not necessary that these petitions be filed by the affected persons, but the court can itself take cognizance of the matter and proceed suo moto or on a petition of any public-spirited individual or body.

• It discarded the traditional concept of locus standi which means that only the person whose legal rights are being violated can approach the court for redress.

• Representations made by way of letters are also treated as writ petitions and Supreme Court and High Courts are empowered to initiate proceedings based on the same.
But there are also a few limitations, such as –

• Petitions born out of personal enmity or to grind a personal axe are not permitted, particularly petitions for improper motives, notoriety and cheap popularity are dealt with imposing exemplary costs.

• A PIL would only be entertained if a segment of the public is interested, not only an individual.

• If there is an undue delay on the part of petitioner to file PIL, the court may refuse to take cognisance of such petitions.
16-Nov-2018 - Question 1

Discuss the relationship between "Fundamental Rights" and "Directive Principles of State policy" in the light of the constitutional amendments and decided cases. (2016) - 150 Words

Model Answer

The relationship between Directive Principles (Part IV) and Fundamental Rights (Part III) has caused difficulty and the judicial attitude has undergone a change over time.

- In the beginning, a strict literal interpretation was advocated and the Fundamental Rights would prevail over the Directive Principles.

- Later in course of time, the Court took the view that the mechanism of harmonious construction should be used to interpret the two Parts via cases such as Hanif Quareshi Mohd. v. The state of Bihar and In Re Kerala Education Bill.

- Then with the case of Sajjan Singh, and Golak Nath, where the judiciary began expanding the Directive Principles and interpreted the two Parts as being co-equal, and without any conflict.

- In Kesavananda Bharti, the court held that the Directive principles should be given primacy over the Fundamental Right and it upheld the constitutionality of the first part of Article 31C (25th Amendment) of Parliament amending the Constitution taking away a Fundamental Right, in order to give priority to the Directive Principles.

- In Minerva Mills, the court stated that there should be balance and harmony between Part III and Part IV, and section 4 of the 42nd Amendment which gave primacy to Directive Principles over Fundamental Rights was held by the majority to be unconstitutional.
16-Nov-2018 - Question 2

Is the Governor's post dependent on the pleasure of the President? Discuss. What exactly constitutes the ‘discretion’ of the Governor while exercising numerous powers? Explain with reference to statutory provisions and relevant case laws. (2018) - 250 Words (15 Marks)

Model Answer

Under Article 155 of the Constitution, the Governor of a State shall be appointed by the President by warrant under his hand and seal. Article 156, which prescribes the Governor’s term of office, says: “The Governor shall hold office during the pleasure of the President.”

The normal rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently, but there are exceptions under which the Governor can act in his own discretion and is not required to seek the “aid and advice” of his Council of ministers.

Several categories of action which the Governor may take in his discretion –

• Article 200 requires him to reserve for Presidents consideration any bill which in his opinion derogates from the powers of the High Court.

• To reserve any other Bill (Art.200)

• To appoint the Chief Minister of the State. (Article 164(1))

• Governors report under Article 356. (Imposition of President Rule)

• Governors responsibility for certain regions such a the Tribal areas in Assam and responsibilities placed on the Governors shoulders under Arts. 371A, 371C, 371E and 371H.

When exercising discretionary powers, with regards to appointing the Chief Minister or Dissolving the House or Governors report recommending Presidents rule, it has been settled by the Supreme Court in Rameshwar Prasad vs Union of India and S.R Bommai vs Union of India, that the Governor ought not to exercise
these powers on his whims and fancies and in the chambers of the Governor, but with caution and on the floor of the assembly and primarily with the aim of promoting parliamentary system in the state.
26-Nov-2018 - Question 1

What do you understand by the term "Eminent Domain"? Discuss its relevance in today's context. (2016) - 150 Words

Model Answer

‘Eminent domain’ means the supreme power of the king or the government under which property of any person can be taken over in the interest of general public.

With ongoing development works which requires land, and also keeping in mind the public policy of abolition of zamindari system after Independence, many reforms were initiated, such as-

- **Under Article 31 A** of the Constitution of India, this eminent domain doctrine is described, and it has been much of a debate since it’s inception in 1951 vide 1st Amendment.

- **Under Article 300 A**, right to hold property is a legal right and can be curtailed, abridged or modified by the State only by exercising its legislative power, not an executive order which will be unconstitutional.

Doctrine of eminent domain recognizes the natural right of a person to hold property, and if that right is taken away by the legislation arbitrarily then it is bound to be declared unconstitutional.

The Courts have also with time have recognised and strengthened the concept of fair compensation along with keeping in mind the welfare objectives of acquiring property by the state.

So long as the public purpose subsists, the exercise of the power by the State to acquire land of its subjects without regard to wishes of the owner or person interested in the land cannot be questioned.
26-Nov-2018 - Question 2

What do you understand by the expression "Independence of judiciary"? Why is it being discussed/debated/questioned too much nowadays? What reasons would you give for this development? (2015) - 150 Words

Model Answer

The concept of “Independence of Judiciary” is the starting and the central point of the concept of the doctrine of the separation of powers. It means the independence of the judiciary from the executive and the legislature.

The important purpose of the independence of the judiciary is that judges must be able to decide a dispute before them as per the law and not being affected by any other factor.

The Constitution has many articles which provide for independence of judiciary, such as relating to the process of appointment of judges, the security of tenure of Judges, their salaries and allowances are charged upon the Consolidated Fund of India.

Under Article 50 of the Indian Constitution, it specifically directs the state "to separate the judiciary from the executive in the public services of the State."

The question is being debated nowadays because the judiciary feels that its power to appoint judges of Supreme Court and High Court is being taken away, moving from collegium system to NJAC thereby corroding the independence of Judiciary (Introduction of NJAC by 99th amendment), but this amendment was held unconstitutional and void violating the basic structure in Supreme Court Advocates-on-Record Association and another vs Union of India.
28-Nov-2018 - Question 1

Discuss the powers and functions of the Union Public Service Commission. Also explain how it has maintained its impartiality. (2016) - 250 Words

Model Answer

Article 320 of the constitution of India have categorically itemized the functions and powers of the Union Public Service Commission.

• The duty of the Union Public Service Commission which is a constitutional body is to conduct examinations for appointment to the services of the Union through an open competitive examination.

• It advises the President on “all matters relating to methods of recruitment to civil services and for civil posts”, when called upon.

• It is consulted on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matter.

• It shall be the duty of the Union Public Service Commission if requested by any two or more states, to assist those States in framing and operating schemes of joint recruitment for any service.

UPSC has maintained its impartiality as

1) The Commission has been declared an independent statutory body, which is responsible to the Parliament, through the Ministry for Home Affairs, for all its activities.

2) The chairman or a member of the UPSC can be removed from office by the president only in the manner and on the grounds mentioned in the Constitution.

3) The conditions of service of the chairman or a member, though determined by the president, cannot be varied to his disadvantage after his appointment.

4) The entire expenses including the salaries, allowances and pensions of the chairman and members of the UPSC are charged on the Consolidated Fund of India.
5) The chairman of UPSC is not eligible for further employment and the chairman or a member of UPSC is not eligible for reappointment to that office.
28-Nov-2018 - Question 2

Imposition of Emergency in a State under Article 356 has always been a matter of controversy." In this backdrop, explain the consequences of proclamation of Emergency in a State. (2018) - 150 Words

Model Answer

The Constitution provides for carrying on the administration of a state in case of failure of the constitutional machinery. (Article 356)

A) Union has the duty to ensure that the government of every state is carried on in accordance with the provisions of the constitution.(Article 355), so the President if satisfied that the state is not being carried as per the constitution, he is empowered to make a proclamation, either on the report of the Governor or otherwise (Article 356(1)).

B) Under Article 365, proclamation may also be made when state does not comply with the directions given by the Union.

This power has gained a lot of controversy from the initial days as it carries a lot of consequences attached to it, such as-

1) President assumes all the powers with himself of the state (except judicial powers), which in real sense is exercised by the Council of Ministers.

2) Suspension of State legislature leading to Parliament delegating the power to make laws for the state to the President/other authority specified.

3) Promulgation of ordinance by the President (Article 357).

In S.R. Bommai case, the apex court held that the validity of a proclamation under Article 356 can be judicially reviewed to examine whether-

1) It was issued on basis of any material

2) Material was relevant.

3) Issued malafide.
Therefore, it is indeed true that it is in true sense an extraordinary power of the Union to meet a political breakdown in any of the units of the federation, which might affect the national strength.

The importance of this power in the political system can hardly be overlooked in view of the fact that it has been used 128 times during last 68 years of working of Constitution, but the guidelines which have been issued in Bommai case surely has a restraining effect on the tendency to use the power on flimsy grounds.
30-Nov-2018 - Question 1

Explain the Scope of "Special Leave Jurisdiction" of the Supreme Court as expounded by it. (2014) - 150 Words

Model Answer

The powers are given by Article 136 in the nature of a special or residuary power, which is exercisable outside the purview of ordinary law in case where needs of justice demand interference by the highest court of the land. It vests only in the Supreme Court plenary jurisdiction on the matter of entertaining and hearing appeals by granting special leave against:

1) Any judgment, decree, determination or order;
2) In any cause or matter;
3) Passed or made by any court or tribunal except a court martial.

• A case cannot be appealed directly from Tribunal to the Supreme Court under Article 136, bypassing the jurisdiction of the High Court was held in I.T Commissioner, Allahabad vs, Lakhiram Ram Das.

• In Haripada Dey vs State of WB and Martu vs State of UP, the apex court has held that this power is exercised only when there is a gross miscarriage of justice and the matter involves substantial question of law.
30-Nov-2018 - Question 2

What are the major challenges in the functioning of local bodies in India? Does it talk about success story or something else? (2018) - 300 Words

Model Answer

Provision for Local Bodies (Rural and Urban) was made in the Constitution of India by inserting Part IX (Articles 243-243O) and 11th Schedule for rural bodies and Part IX A (Articles 243P – 243ZG) and 12th Schedule for urban bodies.

Various provisions provide autonomy, finances mode, social empowerment of women and backward classes and democratic decentralisation in whole, but also with passing times questions have started to raise about its efficacy and sorry state of affairs, primarily in-

1) Financial Position- Not enough funds are available with such arthritis and they have to heavily rely on state funds.

2) Excessive State Control – The main Motto of Democratic Decentralisation has Not been fulfilled as state exercises effective control on every aspect, from composition to finances to elections.

3) Low effectiveness – Works which are carried out by these authorities are not effective as they suffer from poor planning and substandard personnel.

4) Low level of Participation- The general public doesn’t really reach out to these bodies when faced with problems such as Water, Sanitation etc as the authorities are very ignorant on such issues.

5) Administrative Problem-There is politicization of the local administrative units, absence of coordination between the prominent and bureaucratic components and passionless demeanor of government servants towards improvement program and so on.

There have also been some positive sides to it such as women and backward classes get an important role to play in governance of country and they feel empowered, but it is also true that there are Umpteen number of problems.
The individuals who from the local self-government are nearby individuals, they can understand and comprehend the gravity of neighborhood issues more genuinely than the executives of the State and can appropriately solve them.

Therefore, the local self-government is helpful for uniformity and freedom and the ideal medium for fulfilling the requirements and grievances of the general population at local level and it must be strengthened more effectively.
10-Dec-2018 - Question 1

The goals specified in the Preamble contain basic structure of our Constitution, which cannot be amended under Article 368. Elaborate in the context of leading cases. (2013) - 150 Words

Model Answer

The Preamble to an act sets out the purpose and object for which a statute is enacted. It lays down the aims and objectives for which the Constitution is framed.

- In re Berubari case, the Supreme Court held that the preamble is a key to open the mind of the makers and shows the general purpose for which they made the several provisions in the Constitution. It was also held not be a part of the Constitution.

- In Kesavananda Bhartti case, Preamble was held to be a part of the constitution and the apex court also held that it Must be given importance while interpreting the Constitution.

The Apex court also held that it was amendable by the parliament under Article 368, however the only limitation on the amending power of Parliament is that it should exercise it’s amending power so as to destroy the basic features in the preamble.

The goals mentioned in the Preamble, of constituting India into a “Sovereign”, “Socialist”, “Secular”, “Democratic”, “Republic” and also providing the people of India with Justice, Liberty, Equality and Fraternity among others are very important goals, and thus are very basic feature of the Constitution which cannot be taken away.
10-Dec-2018 - Question 2

Examine the doctrine of Separation of Powers. Also mention the relevance of this doctrine in India. (2014) - 150 Words

Model Answer

The Doctrine of Separation of Powers was first formulated by Montesquieu, a French jurist. According to him, there can be no liberty when the legislative and executive powers are united in the same person or body of magistrates. He further emphasized that, judicial power must be separated from the legislature and the executive.

So, the functions of the Government divided into three categories, namely Legislative, Executive and Judicial are to be performed by three different organs, namely Legislature, Executive and the Judiciary. Otherwise the free democracy would lead to tyranny and can have harmful effects on liberty, if not separated.

In India, this doctrine is not strictly applied, but in most situations and cases accepted and applied. The relevance stems from the fact that as sometimes there seems to be controversies attached with it, like President's power to issue ordinance (Executive exercising legislative powers), judicial legislations (Judiciary exercising Legislative powers), among others.

In Ram Jawaya Kapoor vs State of Punjab, the court held that as there is no specific provision related to this doctrine and also owing to complex socio-economic factors, strict separation of powers is undesirable and practically impossible in a welfare state like India.
12-Dec-2018 - Question 1

Define and Distinguish between the terms "Lokayukta" and "Lokpal" in the Indian context. Also mention about its relevance (2015) - 150 Words

Model Answer

The ‘Lokpal’ is the central governing body that has jurisdiction over all members of parliament and central government employees whereas, the ‘Lokayukta’ is similar to the Lokpal, but functions on a state level, both the bodies deal with cases of corruption.

Their primary function is to address complaints of corruption and to make inquiries, investigations, and to conduct trials for the case on respective central government and state government with having responsibility to help in curbing the corruption in the central and state government.

Their relevance in India is of much importance as India has always been struggling with Public Accountability, primarily issue of corruption, which gives a big dent on areas of efficiency, public service, and public welfare issues.

The Lokpal and Lokayuktas Act, 2013 was passed in 2013 by the parliament, main aim being to punish offenders pertaining to corruption, one of the most important issues touching the common people and country at large and thus its relevance and impact is huge. But as of today, Lokpal has not been appointed, even after 3 years of it being passed.
12-Dec-2018 - Question 2

The "Policy and guideline theory" presupposes delivery of justice by quasi-judicial authority.' Elaborate it. (2016) - 150 Words.

Model Answer

India has a written constitution which declares the rights of citizens and provides appropriate provisions to secure and safeguard the rights against the administrative actions. In cases such as ADM Jabalpur vs Shivakant Shukla, the apex court held rule of law to be one of the basic features of the constitution and it cannot be abridged arbitrarily.

But a lot of administrative powers have been held to be arbitrary and have been struck down for the reason of it being against the principle of rule of law.

There are also administrative actions which are not conflict with rule of law, such as concerning-

- Preventing Terrorism/Breach of peace
- Making provisions for betterment and upliftment of SC, ST and Minorities.
- Socio economic decision for children and women.
- Important decisions affecting the Economy of India.

The administrative actions have to be seen through the eye of arbitrariness, fairness and equality. If these are not ingrained, the actions are bound to be nullified by the courts.
14-Dec-2018 - Question 1

"Natural justice is not a made to order formula which has to be fitted to all situations with an iron-bound uniformity." Comment. Refer to case laws. (2018) - 150 Words

Model Answer

“Audi Alteram Partem” is one of the basic principles of natural justice, it says that “no man should be condemned unheard, or both the parties must be heard before deciding an issue”. According to this, reasonable opportunity must be given to the affected party before passing any order or taking any action. The essential ingredients of the Maxim are-

A) Notice – must be reasonable and must contain time, place and nature of hearing.

B) Hearing – opportunity of being heard before taking any adverse action.

Post decisional hearing is a hearing which takes place after a provisional decision is reached. This principle was laid down in Maneka Gandhi v. Union of India. There is a nexus between pre-decisional and post-decisional hearing. The logic behind introducing the post-decisional hearing is to increase and maintain administrative fairness.

It takes place where it may not be feasible to hold pre decisional hearing. Example, the power to impound the passport may be frustrated if a prior notice or hearing has given to the concerned person whose passport is going to be impounded because he can leave the country.

Therefore, post decisional hearing can be applied in the cases, where an opportunity of pre decisional hearing cannot be provided to the party and it effectively satisfies the mandate of natural justice.

Model Answer

Delegated legislation means, legislation made by state legislatures other than legislature, upon entrusted by the legislature itself. According to the doctrine of separation of powers, the legislative powers can be exercised only by the legislature in the state. Delegated legislation is an exception to this doctrine.

Delegated legislation was held to be constitutional in cases where it was held by the court to be necessary and to be in limits, such as In re Delhi Laws Case, Harishankar Bagla vs State of MP and Hamdard Dawa Khana vs UOI.

There are certain limitations to delegated legislation such as few important functions can not be delegated, for example concerning –

- Power to give retrospective effect
- Power to impose tax
- Repeal of law
- Modification without any limitations
- Exemption without laying down the norms and policy.
- Adoption of future acts.
- Ousting of Jurisdiction of courts
- Defining offences and providing penalties without laying any standard.

Thus, the delegated legislation in India is permissible if it is not excessive or arbitrary.
24-Dec-2018 - Question 1

Explain the rights and duties of coastal states over continental shelf, exclusive economic zone and high seas as defined under the provisions of UN Convention of Law of Sea (III) – 2013 (10 Marks)

Model Answer

UNCLOS entered into force in 1994. It provides certain rights and obligations to coastal states and allows them to establish various maritime zones, such as continental shelf, exclusive economic zone (EEZ) and High seas.

Continental Shelf

Coastal states have sovereign rights over the continental shelf to explore and exploit its natural resources, including “mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species.” Coastal states also have the “exclusive right to authorize and regulate drilling on the continental shelf for all purposes.”

The high seas

UNCLOS provides that the high seas are “open to all states” and that all states can exercise freedom of, among others, navigation, over-flight, construction of artificial islands, and other installations, fishing, and scientific research.

Exclusive Economic Zone (EEZ)

As part of these the rights and surprise are for the coastal states which can engage in the following activities, among others:

• determine the allowable catch of the living resources in its EEZ and ensuring, through proper conservation and management measures, that the maintenance of the living resources in the EEZ is not endangered by over-exploitation.

• promote the objective of optimum utilization of these living resources. In engaging in these activities, the coastal state must give due regard to the rights and duties of other states too.
24-Dec-2018 - Question 2

Recognition confers the legal status of a state under International law upon the entity seeking recognition. Important legal effects are being derived from recognition. Critically examine the statement. 2014 (10 Marks)

Model Answer

Recognition is one of the most important issues in international Law as international society is said to be alive and constantly evolving due to this, like new states emanating from the old ones, e.g. disbanding of the Socialist Federal Republic of Yugoslavia in 1991/92 and the creation of Bosnia-Herzegovina, Slovenia, Croatia and Macedonia as independent states or issues of recognition of Palestine.

Recognition can said to be the willingness of a recognising entity to have intercourse with the entity being recognised. This act takes numerous forms, ranging from entering into full diplomatic relations, or sending a formal letter to the newly recognised state, an official pronouncement, and others.

The peculiarity and complexity of recognition is such that it is a combination of politics, national and international law. Its legal and political rudiments are interwoven and cannot be separated, but the fact is the political influence is more though their acts have legal significance.
26-Dec-2018 - Question 1

Discuss the efficacy of International Humanitarian law in the protection of Prisoners of War. 2015 (10 Marks)

Model Answer

All around the globe, there have been instances of inhuman treatment of Prisoner of Wars, and therefore they have been given a special status under international humanitarian law and have been granted with various safeguards to make sure that their basic human rights are well and duly protected.

The Third Geneva Convention of 1949, also known as the “Convention relative to the treatment of prisoners of war, 1949” is the authoritative statement concerning prisoners of war which defines the term as well as lays down their safeguards-

• The Detaining Power is under a general obligation to treat prisoners humanely and protect them from danger.

• They always retain their legal status even while they are kept as prisoners of wars.

• At the end of hostilities they are to be returned to their own country without delay. They must be supplied with food, clothing and medical attention.

• They are also entitled to elaborate due process guarantees, including trial by the courts that respect the same standards of justice as those respected by the courts that would try the military of the detaining state.

• Prisoners are to be treated alike regardless of race, nationality, religious beliefs or political opinions.
26-Dec-2018 - Question 2

Discuss the nature and basis of International law. 2016 (10 Marks)

Model Answer

The system of public international law may be described as ‘consisting of a body of laws, rules and legal principles that are based on custom, treaties or legislation and define, control, constrain or affect the rights and duties of states in their relations with each other’.

Public international law establishes the framework and the criteria for identifying states as the principal actors in the international legal system. International law is concerned with the treatment of individuals within state boundaries.

It also includes the important functions of the maintenance of international peace and security, arms control, the pacific settlement of disputes and the regulation of the use of force in international relations.

Public international law has three principal sources: international treaties, custom, and general principles of law. In addition, judicial decisions and teachings may be applied as "subsidiary means for the determination of rules of law" International law has developed historically and philosophically over many centuries, in many cultures and a rudimentary system of international law existed even in ancient societies.
28-Dec-2018 - Question 1

Differentiate between – De facto and De jure recognition. 2015 (10 Marks)

Model Answer

Recognition of a state is the act by which another state acknowledges that the political entity recognized possesses the attributes of statehood. De-facto recognition.

It is a recognition where a state has not acquired sufficient stability. It is provisional (temporary or conditional) recognition. It is not legal recognition. Three conditions for giving de-facto recognition are –

- permanence
- the state commands popular support
- the state satisfies international obligations.

De-facto recognition of a state is the first step towards de-jure recognition. Normally the existing states extend de-facto recognition to the new states. It is after a long lapse of time when they find that there is stability in it that de-jure recognition is granted.

The essential feature of de-facto recognition is that it is provisional and liable to be withdrawn.

De-Jure Recognition.

It is legal recognition. It means that the government recognized formally fulfills all the requirement laid down. De-jure recognition is complete and full and normal relations can be maintained with the country given recognition. Once there is de-jure recognition, it can’t be withdrawn.
28-Dec-2018 - Question 2

Explain the distinctions between traditional and modern definitions of international law. Critically examine the growing scope and importance of international law in the present context. 2018 (10 Marks)

Model Answer

The traditional definition of international law concerns about a state which is sovereign, i.e. it needs a territory, a population, a government, and the ability to engage in diplomatic or foreign relations. States or organisations other than this are not considered subjects of international law, because they lack the legal authority to engage in foreign relations. Also, individuals do not fall within the definition of subjects that enjoyed rights and obligations under international law.

Lately, there has been a change in the overall definition of International law, where it is more contemporary, expanding the traditional notions of international law to confer rights and obligations on intergovernmental international organizations and even on individuals.

The United Nations, for example, is an international organization that has the capacity to engage in treaty relations governed by and binding under international law with states and other international organizations. Individual responsibility under international law is particularly significant in the context of prosecuting war criminals and the development of international Human Rights.

Of late, the significance of International law has increased in use, due to the increase in global trade, armed conflict, environmental deterioration on a worldwide scale, awareness of human rights violations, rapid and vast increases in international transportation and a boom in global communications.
07-Jan-2019 - Question 1


Model Answer

The definition of “International Treaty” is found in the Vienna Convention on the Law of Treaties of 1969: “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”

Treaties form the basis of most parts of modern international law. They serve to satisfy a fundamental need of States to regulate by consent issues of common concern, and thus to bring stability into their mutual relations. As an instrument for ensuring stability, reliability and order in international relations, treaties are one of the most important elements of international peace and security.

This is why, from the earliest days in the history of international law, treaties have always been the primary source of legal relations between entities today known as States.

In case of Bilateral treaties, the defection of one party terminates the treaty, but in the case of a multilateral treaty position is different as here the defection or withdrawal of one party does not involve the end of the treaty as between other parties to it. The treaty comes to an end with regard to defected party only. Section 3 of the Vienna Convention lays down the different ways by which a treaty comes to an end-

1) By consent of the parties.

2) By concluding another treaty.

3) By withdrawal of a party.

4) By material breach.
5) Impossibility of performance

6) According to provisions of the treaty.

7) Outbreak of war

8) Jus Cogens

9) Rebus sic stantibus
07-Jan-2019 - Question 2

Does the International Court of Justice (ICJ) have the competence to determine it's own jurisdiction? Discuss with case laws. (2017) - 10 Marks.

Model Answer

International Court of Justice has been vested with the power to determine it’s own jurisdiction under Article 36 (6) of the UN Charter: “In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.”

This power, known as the principle of "Kompetenz-Kompetenz" in German or "la compétence de la compétence" in French, is part, and indeed a major part, of the incidental or inherent jurisdiction of any judicial or arbitral tribunal, consisting of its "jurisdiction to determine its own jurisdiction."

It is a necessary component in the exercise of the judicial function and does not need to be expressly provided for in the constitutive documents of those tribunals, although this is often done (see, e.g., Statute of the International Court of Justice, Art. 36, para. 6) : Nottebohm Case (Liech. v. Guat.), 1953

As to its efficacy, Judge Cordova's dissenting opinion in advisory opinion on Judgements of the Administrative Tribunal of the I.L.O. upon complaints made against the U.N.E.S.C.O, he remarked that in international law, where there is no integrated judicial system and where every judicial or arbitral organ needs a specific constitutive instrument defining its jurisdiction, "the first obligation of the Court - as of any other judicial body - is to ascertain its own competence."
Chapter VI of UN Charter is devoted to peaceful settlement of International disputes. Discuss the methods mentioned and explain the role of Security Council and General Assembly in this regard, and the role such settlement plays in obviating the need to resort to Chapter VII measures. (2013) - 25 Marks

Model Answer

CHAPTER VI (Article 33-38) talks about peaceful settlement of disputes concerning nations, where Article 33 talks about the parties to any international dispute to first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Under article 35, any Member of the United Nations may bring any dispute, or any situation of the nature to the attention of the Security Council or of the General Assembly.

It is the duty of the Security Council to –
- call upon the parties to settle their dispute by such means.
- investigate any dispute, or any situation which might lead to international friction or give rise to a dispute.
- recommend appropriate procedures or methods of adjustment.
- take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

Article 37 talks about the parties to a dispute failing to settle it by the means indicated above, it be referred to the Security Council and If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it has to decide the method of actions or to recommend such terms of settlement as it may consider appropriate.

This is very important aspect, as if there is no peaceful settlement then Chapter VII provides for action with respect to threats to the peace, breaches of the
peace, and acts of aggression, which includes-
- complete or partial interruption of economic relations and of rail, sea, air,
  postal, telegraphic, radio, and other means of communication, and the severance
  of diplomatic relations. (Article 41)

- If above-mentioned is 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. Such action may include demonstrations,
  blockade, and other operations by air, sea, or land forces of Members of the
  United Nations. (Article 42)
09-Jan-2019 - Question 2

"Asylum stops as it were when extradition begins". Comment. Also explain the various principles of extradition with reference to leading cases. (2014) - 10 Marks

Model Answer

Asylum means offering sanctuary to those at risk and in danger, in compliance with States’ obligations under international refugee law, human rights law and customary international law, while Extradition is a formal process whereby States grant each other mutual judicial assistance in criminal matters on the basis of bilateral or multilateral treaties or on an ad hoc basis.

International law leaves States considerable latitude to establish their national legal framework for extradition. Despite being different, national extradition laws are also similar in a number of respects, and it is possible to identify certain general principles and requirements, including the following:

• The State seeking the surrender of a person must present a formal extradition request and is also required to submit certain documents in support of the request.
• Extradition may only be granted if the conduct imputed to the wanted person constitutes an extraditable offence under the applicable extradition agreement or legislation.
• Generally, extradition will be granted only if the offence imputed to the wanted person is a criminal offence under the jurisdiction of both the requesting and requested State.
• The requesting State may prosecute an extradited person only for the offence(s) specified in the extradition request, unless the requested State consents. Similarly, the requesting State may not re-extradite the person to a third State without the agreement of the requested State.

Case laws: Valentine v. United States, Assange v Swedish Prosecution Authority.
11-Jan-2019 - Question 1

Explain the principles of 'Ratification of a Treaty'. Also, examine the consequences of non-ratification of a treaty. (2015) - 10 Marks.

Model Answer

When a treaty signed by the representative of the state is confirmed or approved by the state, the act of confirmation or approval is called “Ratification”. Vienna Convention under Art. 2(1) (b) lays down that ratification is an international act whereby a state establishes on the international plane it’s consent to be bound by a treaty.

Ratification of a treaty is an internal procedure, determined by the internal laws and usage of each state. In India, President ratifies the treaty on the advice of the central cabinet.

States are not bound to ratify a treaty. International law does not Impose any duty upon the states to ratify those treaties which have been signed by their representatives.

Ordinarily, state parties are not bound by treaties until they ratify them. However it is not necessary in all cases for a treaty to be binding with ratification only.

Much depends upon the intention of the State parties. If a state party has intended that ratification was essential then the treaty becomes enforceable in law only after ratification. But if ratification is not essential then under some special circumstances, the provision of treatment may create binding force.
11-Jan-2019 - Question 2

Final words of Paris Agreement under the UNFCCC, 2015 was adopted unanimously by 195 countries. According to this Agreement, Nationally Determined Contributions (NDC) are to be reported every 5 years and are to be registered with UNFCCC Secretariat which will be 'progressive' depending upon the targets set by each country itself and therefore contributions have been made 'non-binding' as a matter of International law and there will be a 'name and shame system' or 'name and encourage plan'. After explaining essential features, comment on the effectiveness of such an agreement. (2016) - 20 Marks

Model Answer

Countries around the world recognized that climate change is a reality and in 2015 came together to sign a historic deal to combat climate change – Paris Agreement. The aims of Paris Agreement are as follows:

• Keep the global temperature rise this century well below 2 degrees Celsius above the pre-industrial level.

• Pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

• Strengthen the ability of countries to deal with the impacts of climate change.

The Paris Agreement recognizes the development imperatives of developing countries like India or China and their efforts to harmonize development with environment, while protecting the interests of the most vulnerable. The Paris Agreement recognizes the importance of sustainable lifestyles and sustainable patterns of consumption with developed countries taking the lead, and notes the importance of ‘climate justice’ in its preamble. The objective of the Agreement further ensures that it is not solely mitigation-centric and includes other important elements such as adaptation, finance, technology, capacity building and transparency of action and support. But issues also persist, with regards to its efficacy, as there are no binding targets as of Kyoto protocol and also there are doubts regarding the funding and technology support by developed countries.
21-Jan-2019 - Question 1


Model Answer

International humanitarian law is a set of rules which aims at limiting the effects of armed conflicts for humanitarian reasons. It protects persons who are not or are no longer participating in the hostilities and controls the means and methods of warfare. It is part of international law, which is the body of rules governing relations between States.

States have an obligation to teach its rules to their armed forces and the general public.

They must prevent violations or punish them if these occur. In particular, they must enact laws to punish the most serious violations of the Geneva Conventions and Additional Protocols, which are regarded as war crimes. Two very important conventions play a huge role in the development of International Humanitarian Law:

1. The law of The Hague.
2. The law of Geneva, or humanitarian law.

The two conventions take their names from a number of international conferences which drew up treaties relating to war and conflict, in particular The Hague Conventions of 1899 and 1907, and the Geneva Conventions, the first which was drawn up in 1863. The Geneva Conventions deal with the question of whether certain practices are acceptable during armed conflict.

The Law of The Hague "determines the rights and duties of belligerents in the conduct of operations and limits the choice of means in doing harm". In particular, it concerns itself with the definition of combatants, establishes rules relating to the means and methods of warfare; and examines the issue of military objectives.
The warfare scene of the world has changed significantly since the Geneva Conventions of 1949, but are still considered an important aspect of the contemporary international humanitarian law as they protect combatants and civilians caught up in the zone of war as also observed in various cases concerning Wars and international armed conflicts in Afghanistan, Iraq, the invasion of Chechnya (1994–present) and the 2008 War in Georgia.
21-Jan-2019 - Question 2

What are the objectives, structure and functioning of World Trade Organization? Does signing and ratifying WTO undermine the Parliamentary authority of India? (2014) – 20 Marks

Model Answer

The WTO has six key objectives:

(1) to set and enforce rules for international trade,

(2) to provide a forum for negotiating and monitoring further trade liberalization,

(3) to resolve trade disputes,

(4) to increase the transparency of decision-making processes,

(5) to cooperate with other major international economic institutions involved in global economic management, and

(6) to help developing countries benefit fully from the global trading system.

The structure of the WTO is dominated by its highest authority, the Ministerial Conference, composed of representatives of all WTO members. The day-to-day work of the WTO, however, falls to a number of subsidiary bodies; principally the General Council, also composed of all WTO members, which is required to report to the Ministerial Conference. The General Council delegates responsibility to three other major bodies - namely the Councils for Trade in Goods, Trade in Services and Trade-Related Aspects of Intellectual Property.

Signing and ratifying WTO in no way undermines the authority of Parliament in India, as it is up to the Parliament to decide as to whether any treaty is to be ratified or not.

Parliament can by making a law prohibit the Executive to enter into a particular treaty or a particular kind of treaties; similarly, it can also direct the Executive to
enter into a particular treaty or may disapprove or reject a treaty signed and/or ratified by the Executive.
23-Jan-2019 - Question 1

What are the essential differences between the International Humanitarian Law and International Human Rights Law? Explain (2016) – 10 Marks

Model Answer

Both international humanitarian law and human rights law apply in armed conflicts. The main difference is that international human rights law allows a State to suspend a number of human rights if it faces a situation of emergency while International Humanitarian Law cannot be suspended (except as provided in Article 5 to the Fourth Geneva Convention).

International Humanitarian Law is based on the Geneva and Hague Conventions, Additional Protocols and a series of treaties governing means and methods of waging war as well as customary law.

International human rights law is more complex and includes regional treaties. The main global legal instrument is the Universal Declaration of Human Rights adopted by the UN General Assembly in 1948. Other global treaties include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights etc.

In situations of armed conflict, human rights law complements and reinforces the protection afforded by International Humanitarian Law.

Model Answer

An international dispute is a disagreement over the rights of two or more states with regard to various issues ranging from control of land and natural resources, ethnic or religious demography, and even ambiguous treaties. When left unchecked, international disputes have caused criminal actions, terrorism, wars, and even genocide.

Embodied in UN Charter Article 36, paragraph 2 is the system of optional clause or compulsory jurisdiction, it being optional for States to make a unilateral declaration to submit to the jurisdiction of the ICJ.

Article 2 of the UN Charter lays down that “all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered”.

Furthermore, the role of the ICJ in this regard is bolstered by the inclusion of judicial settlement among the means of peaceful settlement of disputes enumerated in Article 33(1) of the Charter. ICJ being a principal judicial organ of the United Nations has both the authority as well as the responsibility of fostering the cause of international peace and security by means of peaceful settlement of international disputes.

ADR methods can be made an appropriate international dispute settlement mechanism for international disputes. Primarily Arbitration is especially valuable in contract disputes between a private company and a government agency or government-controlled company. Parties to international contracts often favour ADR methods because compared to litigation as it is inexpensive, rapid, informal, generative of consensus, and a means of minimizing or avoiding the need for lawyers.
These advantages are partially attainable through the careful structuring of the arbitration agreement, but without the proper agreement they can prove illusory.
25-Jan-2019 - Question 1


Model Answer

Human Environment is the natural and physical environment and the relationship of people with that environment, including all combinations of physical, biological, cultural, social, and economic factors in a given area. United Nations has a huge role to play in protecting and improving the human environment as-

• The first ever conference concerning Human Environment was held in Stockholm in 1972 by the name United Nations Conference on the Human Environment with participation of 122 countries and Stockholm Declaration.

• The United Nations Environment Programme (UNEP), coordinates the organization's environmental activities and assists developing countries in implementing environmentally sound policies and practices and has overall responsibility for environmental problems among United Nations agencies;

• Other UN organizations, like the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification indulge in international talks on specialized issues, such as addressing climate change or combating desertification.

• The World Meteorological Organization and UN Environment Programme established the Intergovernmental Panel on Climate Change (IPCC) which provides the world with an objective, scientific view of climate change and its political and economic impacts.

• Various treaties and Conventions regarding Environmental causes such as Kyoto Protocol and Paris Agreement have been framed under UNFCCC and it’s Conference of Parties.
25-Jan-2019 - Question 2

**Explain the fundamental principles of International Humanitarian Law as envisaged under International Conventions ? (2017) – 15 Marks.**

**Model Answer**

International humanitarian law is a set of rules which aims at limiting the effects of armed conflicts for humanitarian reasons. Two very important conventions play a huge role in the development of International Humanitarian Law:

1. The law of The Hague.

2. The law of Geneva, or humanitarian law.

The Hague Conventions of 1899 and 1907 and their annexed regulations are a set of conventions primarily regulating the conduct of hostilities. The Conventions represent the basic and commonly accepted rules of engagement – the legal framework covering the means and methods of warfare.

The Four Geneva Conventions of 1949 represent the fundamental treaty text regulating issues of protection in situations of armed conflict.

The First Geneva Convention (GCI) provides protection to wounded and sick.

The Second Geneva Convention (GCII) provides protection to the wounded, sick and shipwrecked in armed conflicts at sea.

The Third Geneva Convention (GCIII) provided protections for Prisoners of War.

The Fourth Geneva Convention (GCIV) provides protection to civilians in armed conflict, including those living under occupation.