

LAW PAPER I**TIME ALLOWED: 1 HOUR 45 MINUTES****MAXIMUM MARKS : 150 MARKS****Question Paper Specific Instructions**

Please read each of the following instructions carefully before attempting questions:

There are FOUR questions in total :

- *Candidate has to attempt **THREE** questions in all.*
- *Questions no. **1** is **compulsory** and out of the remaining, TWO are to be attempted.*
- *The number of marks carried by a question /part is indicated against it.*
- *Answers must be written in the medium authorized in the Admission Certificate which must be stated clearly on the cover of this **Question-cum- Answer (QCA)** Booklet in the space provided.*
- *No marks will be given for answers written in a medium other than the authorized one.*
- *Word limit in questions, wherever specified, should be adhered to.*
- *Attempts of questions shall be counted in sequential order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the question-cum-Answer Booklet must be clearly struck off.*

VIRTUAL INSTRUCTIONS:

- *Kindly write the answers within the stipulated time. Be honest with yourself.*
- *Upload it in the portal given below as per the instructions shown there.*
- *Once the answer- sheet is uploaded, we will take cognizance of that and the solutions will be mailed personally.*
- *By waiving the right to write, you can get the solution right away.*

Q1. Answer the following in about 150 words each :**10x5=50**

- a) Explain and elucidate the significance of the various strategies adopted for the implementation of the 'Directive Principles' of State Policy enshrined in Part-IV of the Indian Constitution.
- b) What do you understand by "Legal Aid" and explain its expanding horizon in the contemporary society.
- c) Write a short note on various principles/approaches in International Environmental law.
- d) Briefly explain the basic tenets of International Humanitarian Laws.
- e) Write a short note : Clarify the position of Reservation Policy in promotion for SC/STs government employees under Constitutional Law of India.

Q2. Answer the following :

- a) "No organ of the state may arrogate to itself powers beyond what is specified in the Constitution" examine this statement in light of constitutionalism. (20 m)
- b) The supreme Court has generated another version PIL – to be called as Public Cause Action which do not require essentially the violation of FR but it address common issue as welfare of people and better administration. Does it tantamount to Judicial overreach or necessary in the prevailing socio-economic situation in the country? (20m)
- c) The right of the media to report news as it happens is constitutionally guaranteed under Article 19(1)(a) of the Constitution. This extends to viewers and readers who have a right to know. However the media cannot be allowed to violate the national interest." Critically examine the test evolved by judiciary to determine to balance the freedom of expression and the reasonable restrictions. (10m)

Q3. Answer the following :

- a) Trace the history, nature, definition and scope of International law (20m)
- b) "International society is not an unchanging entity, but is subject to the ebb and flow of political life. New states are created and old units fall away. Each state will have to decide whether or not to recognize the particular eventuality and the kind of legal entity it should be accepted as." Critically examine the theories and modes of state recognition. (20m)
- c) Write a short note : Optional Clause of ICJ (10m)

Q4. Answer the following :

- a) Elucidate the Peaceful methods of settlement in the International law. (15 m)
- b) "Intervention is a highly politically charged term that that often involves the use of force. In a broad sense, it refers to external actions that have effects in the domestic affairs of a sovereign state" .Comment. (15m)
- c) Explain the following : (20m)
 - i. "Reform for U.N.S.C is inevitable to preserve the world order". Comment.
 - ii. Challenges in the working of U.N. in recent times. Comment.

LAWXPERTMV INDIA
EVALUATION REPORT FOR TEST 1 - FOR Ms. RUJUTHA BANKAR

COMPONENTS	REMARKS
RELATING THE QUESTIONS TO CURRENT AFFAIRS/ PRACTICAL SITUATION	CAN IMPROVE That live telecast –issue for press question excellent – other answers too you have related CA But in giving international law and municipal law theories – question 4 completely lack of CA and practical examples
CONCEPTUAL CLARITY	GOOD You are good at concepts : well done.
WRITING THE REQUIRED ANSWER	GOOD Question 1 a – excellent – multi-dimensional thought – give the same for all answers
PRESENTATION	GOOD
HANDWRITING(LEGIBILITY)	LEGIBLE
USING TOOLS OF PRESENTATION: <i>POINTS, BULLETIN, CHARTS ETC</i>	GOOD
WISDOM TO LEAVE THE UNKNOWN ANSWERS	GOOD

kindly take our criticism in positive way – we are here to see you win – there is no personal offence . Thank You.

SPECIFIC REMARKS: Your style of writing is good : you have a good way of modelling answers

ALL THE VERY BEST

Q. 1a)

Ans:

Part IV consisting of Art. 36-51 Okie
 contains the directive principles of
 state policy (DPSPs) that are not
justiciable but fundamental in
 governance of the country. (Art. 37). okie
 Hence various means have been
 adopted for their implementation.
Good in legal provisions

• STRATEGIES FOR IMPLEMENTATION -

one and only aspirant to give this side heading

① Amendment of fundamental rights
 (Part III) to implement DPSPs and they
 are later given statutory form. excellent

eg: Art. 45 (education free up to age 14)
 was made a fundamental right
 under Art 21A by 86th Amendment
 and then implemented as Right to
 Education Act. good - again

② Read into Art. 21 by Supreme Court

Supreme Court (SC) has expanded
 ambit of Right to Life under Art 21
 by including quality of life aspects
 such as given in DPSPs, including

- a) Art. 48A - Right to Clean environment -
MC Mehta v. Union of India (Delhi NG case)
- b) Art 39A - Right to Free legal Aid -
Hussainara Katoon v. State of Bihar

③ Implementation of schemes :

- a) ICDS programme - Art. 39(f), Art 45
→ children to develop in free & healthy manner.
- b) Rashtriya Krishi Vikas Yojana - Art 48
- development of agriculture along scientific lines

④ Direct legislative enactments.

- a) workers Compensation Act, minimum wages Act, Industrial disputes Act
- Art 43: Welfare of workers.

DPSPs and FRs have to be harmoniously construed for economic & political democracy.

You have very good way of thinking friend - one in 100s to give such a best answer

Q-2 b)

Ans:

Legal Aid refers to the provision of subsidized or free legal assistance to vulnerable and ^{okie} marginalized sections of society.

• LEGISLATIVE BACKING -

Art. 39A ^{good} talks about duty of the state to provide free legal aid and ensure equitable operation of the judicial system. In light of its obligation, the government has enacted: ① Provision in CPC - legal aid ^{CPC touched - very good} to indigent citizens on application.

② National Legal Services Authority ^{yes}
Act - Legal aid services for citizens through statutory authorities at state and national level and cells attached to all tiers of judiciary.

• EXPANDING HORIZON -

Traditional definition was limited to representation in courts for those who could not afford hiring services

of advocate. Today, aspects include:

- ① Legacy literacy - understanding laws, terminology, basic procedures
- ② Legal awareness - knowing rights and the forum for their remedy.
- ③ Enhanced access - Accessibility of justice through better reach of courts to the last mile. examples ?
- ④ Ease and speed - Through the use of Alternative Dispute Redressal, Lok Adalat and Gram Nyayalayas. SC's Middle Income Group Scheme, LIMBS and e-Judiciary. Mission Mode Projects are steps in expanding legal aid.

You have given side headings in such a way to suit the needs of the question asked - keep it up

Answer has a good flow - all required points also covered

Q.1.c)

Ans:

good

[Art. 38(1)(d)] of the International Court of Justice's Statute states that 'Judicial decisions, works of highly qualified jurists' are the fourth source of law.

• SIGNIFICANCE OF JUDICIAL DECISIONS:

- a) ICJ decisions — Decisions of the World Court though only binding among parties to the dispute, [Art. 59 - ICJ ^{yes} statute] and not a part of precedent are important source of law, because
- detailed exposition of legal position.
 - Research and analysis of existing state of law.
 - comparison of customs, treaties and their relevance in international law. [eg: North Sea Continental shelf case - 'equidistant principle' though part of many treaties is not customary]

excellent required
case given

b) Arbitral Tribunal decisions - Usually more diplomatic than judicial in form (eg: Kutch Award b/w India and Pakistan). However, ^{yes} decisions of the Permanent Court of Arbitration have high persuasive value as they involve study of evidence, legal provisions and international statutes.

c) State judicial decisions - Help in development of law. Seen as evidence of state's belief and state practice. Similar decisions by numerous domestic courts aid formation of custom. [eg: Paquete Habana case, USA - 'international law' is part of our law]

By themselves they are a supplementary source but they give depth to other sources like treaties, customs and determine what exactly 'general principles' are.

Remarks - Your examples are so apt and concepts also good

Q1 d)

Ans:

International Humanitarian Law consists of the Hague Conventions of 1899, 1907; Geneva Convention of 1949 (and three preceding) and the two Supplementary Protocols to it. okie

But start with what actually is IHL - just 2 lines

BASIC TENETS OF IHL -

1. Not based on principle of reciprocity -
Belligerents from the High Contracting Parties have to follow principles irrespective of whether the opposite side follows them in international conflicts. (Art 2) okie - good
2. Wounded, stranded, surrendered soldiers are treated at par with civilians - whether they are on the field or at sea.
3. Areas not engaged in war, civilian zones (residential) - not to be targetted.
4. Medical units, establishments, personnel carrying the distinctive

Red cross, Red crescent, Red crystal are not to be attacked.

yes - good

5. Use of force should not be disproportionate and not go beyond what is required to achieve aims of war.

6. Protocols II & I also talk about applicability of these provisions to journalists and internal armed conflicts.

sites like nerve gas use in Syria, killing of civilians in Yemen
Recent CA given
shows flagrant violation. UN SC should ensure stricter adherence to these principles.

Can refer solution for better ans - but you have tried your best to give apt points - good attempt

Q.1.e)

Ans:

^{yes !!}
Art. 16 provides for equality in matters of public employment under government of India and the states.

Through an amendment Art. 16(4) ^{---good} was added which provided for reservation in government jobs to weaker sections i.e. backward classes not adequately represented in addition to reservation for SCs and STs.

This reservation was challenged in the Indira Sawhney v. Union of India (1993) where the SC also struck down the carry forward rule for SCs and STs. It meant that every year fresh vacancies would be filled. Further, SC held that there would be reservation only at entry level and not in promotions.

this part not
required

yes - can come here directly

To nullify the effect of this judgment, the government amended Part III and inserted Art. 16(4A) which provides for reservation in promotions for SCs/STs. amendment number ?

This provision was considered a necessity in light of historical injustice and discrimination faced by this community.

Refer solution for more clarity - yet a good try

4/10

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Q.2.

a)

Constitutionalism = limited government

Ans:

Constitutionalism is the concept that functioning of the polity, implementation of Fundamental Rights, provision of civil liberties, are derived from the constituent instrument termed the "GRUNDNORM" or Basic Law of the country. Nope

• FEATURES OF CONSTITUTIONALISM -

The idea of constitutionalism is not only based on the presence of a constitution, even despotic states have such instruments, But the idea is for a Supreme Law with following features -

a) Rule of Law - It means that all are subject to the law of the land equally, there are no privileges.

b) Principles of Natural justice - Such as audi alteram partem (let the other side be heard), no one should

be a judge in his own case are hall marks of the law.

(c) Democratic ethos - ~~give~~ treating everyone equally, giving a voice to marginalized, providing unalienable fundamental rights are the golden threads of constitutionalism.

d) Justice, equity, fairness - These values are integral to the idea of constitutionalism.

e) Limitations on power of the governmental organs - As they are incorporated in the Constitution, they cannot be changed or exceeded at the desire of any branch of the government.

• CONSTITUTIONALLY DEFINED LIMITS ON STATE ORGANS - okie

1. Principle of separation of powers - Has been termed part of the basic structure in *Raj Narain v. Indira Nehru Gandhi* striking down 39th Constitutional Amendment Act that

attempted to put the election of PM, VP, President beyond judicial review thus exceeding powers provided by the Constitution.

2. Judiciary - executive - Judicial
overreach with recent judgments such as Shyam Narayan Choksey (National Anthem case), Highway liquor ban show SC encroaching into executive domain.

okie - relevant articles?

3. Executive - legislature - overriding
majority of executive, appointment of Parliamentary secretaries, passing of ordinances go against the spirit of Art 75 (executive accountable to legislature).

• Way forward -

Cooperation and consultation by strengthening Parliamentary committees, using Advisory jurisdiction under Art. 143 of SC, detailed debates and discussions in Parliament will lead to following the Constitution in the true sense.

Good attempt - but can get insights from solution

Q.2b)
Ans:

'Public Cause Action'

The Supreme Court of India has acquired an activist magnitude since the Maneka Gandhi Case (1978) wherein it interpreted Art. 21 in an expansive manner.

The instrument of Public Interest Litigation (PIL) as evolved by Justices Bhagwati and VR Krishna Iyer has been a tool par excellence to accessibility of justice to common man. The question arises whether it has transcended acceptable limits.

• EVOLUTION OF PIL -

1. 1978 - 1991 - First Phase

The SC in the earlier cases such

as Bandhua Mukti Morcha, SP Gupta laid down following guidelines:

- Relaxation of locus standi
- Public spirited citizen can approach court on another's behalf when latter is socio-economically vulnerable.

c) Letters treated as petitions

State what is PCA - how it came from PIL ?

This was a form of 'judicial activism' where in numerous landmark cases, citizens were provided rights
 Right to livelihood - Olga Tellis case
 Right to Education - Unnikrishnan case
 Right to Clean Environment - MC Mehta case.

Citizens approached the courts through Art. 32 on ground of violation of Fundamental Rights.

2. 1992 - 2010 - Phase two

This period saw the rise of specialized NGOs that generated expertise in filing PILs and gave courts opportunity to cleanse systemic deficiencies going beyond human rights issues to administration, policy implementation, electoral reforms.

Some of these actions bordered on "Judicial overreach". eg: 2G spectrum judgment that was recently overturned, directing auction as the method to be used for all natural resources (coalgate scam) and so on.

Some judgments like PUCL (NOTA case), ADR (affidavits case) were indeed laudable.

3. 2010 onwards - Phase 3

Judicial review → Judicial activism → judicial overreach → Judicial adventurism

The rise of public cause action has certain drawbacks -

- ① Does not comply with letter of law (Art 32, provides remedy for violation of fundamental rights only)
- ② Goes beyond constitutionally defined limits and encroaches on executive domain. eg: National Anthem case.
- ③ SC itself lured case of Political interest and Proxy interest litigation in garb of Public Interest litigation.
- ④ Practicality and technicalities of implementation overlooked by order. eg: Liquor ban had to be modified.

But it is also required -

- ① Protect rights of the marginalized. eg: Tribals being displaced by dams.
- ② Lead to effective utilization of Public resources and control

corruption.

- ③ Protect minority rights that Parliament may not have political will to support eg: current PIL about decriminalization of S. 377.
- ④ Hold government accountable.
eg: Recent directions over mob lynching.
- ⑤ Uphold values of gender equality
eg: Sabarimala judgments.

On balance, such orders should be sparingly used where citizens' rights are involved.

Great note on PIL not PCA

2/20

Q2c)

Ans:

Important question many a times asked in mains

The Freedom of Speech and Expression (Art. 19(1)(a)) includes freedom of Press in India. good

• RIGHT TO KNOW -

In Prabha Dutt v. Union of India - in case regarding interview of death sentence convicts, the SC upheld right of journalist to convey and right of readers to receive information. Further in case of okie

Sey, I & B Min v. BCCI, the SC upheld the right of broadcast and a corresponding right of viewers to receive information via air.

• REASONABLE RESTRICTIONS -

These rights are subject to reasonable restrictions as laid down in Chintamani Rao v. St. of MP -

- ① The grounds for restriction are provided in Art. 19(2).
- ② The restrictions should have a rational nexus to the objective to be achieved by the Act.
- ③ It is not the content or objective of the Act but the "effect" it has on free speech that determines reasonableness (Bennett Coleman case).
- ④ It is not the subjective standard of the judge but an objective standard of a rational citizen that determines reasonableness.
- ⑤ It should be reasonable from procedural and substantive point

of view.

• Analysis -

The courts in India have leaned in favour of free speech. But certain incidences like 26/11 live reporting, coverage of Kashmir attacks have implications for national security & citizen's safety. In this context, limited censorship is required.

excellent recent CA given

However, in respect of free press, such limitations should be in the form of self regulation rather than government orders that have danger of encroaching Art. 19(1) (a).

Bodies like Press Council, Editors Guild, Broadcaster's Council should be suitably empowered.

Good attempt - but test not given

Question No.

U.P.S.C.

Don't write
anything this
margin



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Q. 4. a) IL & ML.

Ans:

The relationship between international law and municipal law is acquiring critical importance in recent times when rise of new areas in international law such as human rights, environment deal with the individual, thus blurring lines.

okie

• MAJOR THEORIES -

1. MONISM -

This theory advocates that international law and municipal law are both branches of a unified theory of law. Any denial of such unitary relationship means a negation of international law as law itself. Certain theorists like Kelsen assert the superiority of international law as standing above municipal law that derives its validity from it.

example ? illustration ?

Evaluation - States do not accept this theory in practice, as they assert superiority of domestic law.

2. DUALISM -

This believes that both municipal and international laws are distinct systems. It is based on ideas of state will, ^{as source} ~~while~~ of municipal law and common will of all states as source of international. Further ^{okie} Triepel has stated that individuals are subject of domestic, while states of international. Anzilotti ^{good} says the difference is of basic principle, international law ~~&~~ lacks sanction and is followed due to good faith (pacta sunt servanda).

3. SPECIFIC ADOPTION AND TRANSFORMATION

International law has to be adopted in the domestic field explicitly by the legislature. This implies that consent is required

for application of international law.
eg: Indian Vienna Convention on Diplomatic
Relations Act.

illustration - or examples of countries following it
need to be given under each head

* PRACTICE IN INDIA -

Prof. Alexandrowicz states that in
Art. 51 (1) - states shall foster respect
for international law and treaty
obligations, the former refers to
customary law and the latter to
conventions.

① Customs -

As regards customs, India follows
the British practice - i.e. they are
considered part of Indian law
if they are not explicitly
contrary to any enacted statute
or the constitution

eg: India follows the principle of
non-refoulement though it is
not party to Refugee Convention.

② Treaties -

The SC in landmark case

K. Ishwarbhai Patel v. Union of India (Kutch Award) held that the American practice of self and non-self executing treaties is followed in India.

Thus the Constitution (100th) Amendment Act was passed recently to implement the bilateral treaty - Land Boundary Agreement with Bangladesh.

Further, when there is a void or lacuna in existing laws, international laws are followed. In Visakha v. State of Rajasthan, CEDAW and UDHR were relied on to give protection to women from sexual harassment at workplace. land mark case given

Thus, a combination of global best practices and local approaches regarding relationship between both are followed in India.

Q.4. b) i) Withdrawal of recognition and non-recognition

As per Oppenheim, recognition is the process by which existing states admit that a new state fulfills the conditions of statehood i.e. sovereignty, government, population and territory. okie

• WITHDRAWAL AND NON-RECOGNITION -

The facultative theory states that recognition is a political-diplomatic function and there is no legal duty or obligation to recognize a state that fulfils conditions okie

Thus, recognition once granted can be withdrawn if in the opinion of the recognizing state it no longer fulfils conditions of statehood.

The consequence is that the legal effect of recognition also ceases with retrospective application refer solution for better ans

Non-recognition on the other hand is an ab-initio process where in the state is considered a non-entity. ^{okie}
 eg: Bangladesh was not immediately recognized by US and Pakistan. The Constitutive theory of recognition believes that such states have no rights in international law. ^{average attempt}

^{example - real life illustration etc ?}

ii) legal effects of recognition

Recognition grants certain privileges and immunities which have legal consequences in municipal law as well as international law.

• INTERNAL

The recognized states can sue and be represented in the courts of the recognizing states

US v. PINK - It was held that only cases ^{good} of recognized ~~can~~ states can be heard, while in SOVIET v. CIRBARIA, it was held that only the ^{okie}

executive and not the judiciary can undertake recognition.

The legislative and executive acts of recognized state get legal status. It can succeed to assets in banks of recognizing state and claim ownership of property. It also gets sovereign immunity in municipal jurisdiction of recognizing state.

• INTERNATIONAL

A state is accepted as a responsible member of the international community of nations.

Art. 2(6) of UN Charter places certain obligations on non-member states as well to follow principles of the Charter.

Further, it has to follow customary rules of international law.

It is provided with diplomatic courtesies. The

international effect is more a political concern than purely legal.

Hence, Justice Phillip Jessup demanded that uniform criteria such as membership of UN should be regarded as basis for recognition.

Last part of the answer was good
Part 1 needs improvement

8/25

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