

1(a)

उम्मीदवारों को इस
हार्जिन में नहीं
लिखना चाहिए,
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As per Prof. Nani Palkhivala, "Preamble is the identity card of the constitution. It not just mentions the principles on which our constitution is based but also reflects our collective aspirations."

Utility of the Preamble

- ① Mentions objectives of polity
 - ↳ justice social, economic and political
 - ↳ liberty
 - ↳ equality of status and opportunities
 - ↳ Fraternity of individual dignity along with sovereignty and integrity
- ② sets goals to measure performance
 - ↳ socialism, secularism
- ③ Interpretation aid
 - ↳ in S.R. Bommai v/s Union of India

used preamble to declare secularism as basic structure

- ④ Reflects aspirations of the people (y) democratic republic
- ⑤ Indicates source of constitution i.e. "We the people of India"

However, Preamble is not legally enforceable.

Limitations of Preamble

- ① No substantive addition (eg) liberty already in Art-21, justice in PPSs (Art-38)
- ② Redundant (y) secularism already implicit

Regardless, Preamble is the "preface" to our constitution and is an integral part [Kesavanand Bharati v/s State of Kerala]

1(b)

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Separation of powers, borrowed from Montesquieu's 'Le Esprit des Loix' propounds that there should be structural and functional division of powers between gubernatorial organs.

Examination of the doctrine

① Traditional view:

- ↳ strict separation of power between legislature, executive and judiciary [eg. in USA]
- ↳ No interference by one organ in others' functions

② Modern view:

- ↳ checks and balances: every organ to hold the other accountable (eg in Marbury v/s Madison, judicial review of legislative acts)

Relevance in Indian Constitution

- ① separation only functional
- ↳ Art: 74 - executive part of legislature
 - ↳ Art. 32 and Art 12 - judicial review of administrative and legislative action
 - ↳ Art 105 - quasi judicial power of legislature

In State of Punjab v. Ram Jawaya Kapoor - Supreme Court held no absolute and rigid separation of powers in India

- ② separation of powers is basic structure
[held in Kesavanand Bharati v. Union of India (1973)]

- ③ modern and practical separation of powers - in Supriya Chakraborty v. Union of India, one organ not to usurp essential functions of the other

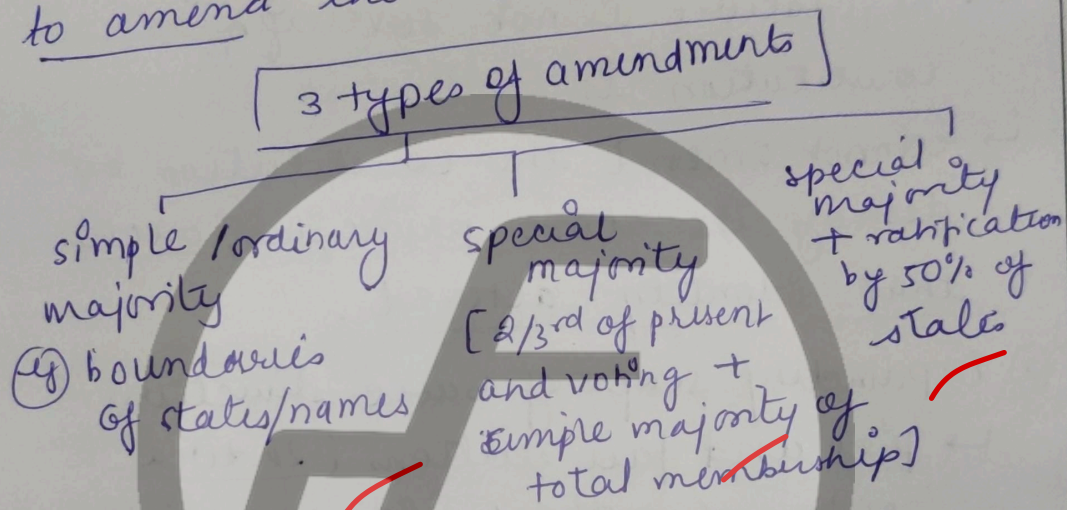
Thus, separation of powers adopted in India enhances constitutionalism - it is pragmatic, not pedantic.

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Art 368 of the Constitution prescribes the constituent powers of the Parliament to amend the constitution.



Width of amending power

- ① ~~Art~~ No express limitations Art 368 provides plenary powers of amendment to the Parliament
- ② can amend any provisions : Keshavanand Bhardi v/s Union of Kerala held even fundamental rights can be amended

But the power of amendment is limited.

Limitations

① Basic structure doctrine in Kesavananda Bharati case held:

↳ legislature is not sovereign,

Constitution is ^{from parts of}

↳ cannot amend the constitution to

destroy its ^{rule from parts of} core principles, such that identity altered.

② Expanding scope of basic structure

↳ free and fair elections [India Nehru Gandhi v/s Raj Narain]

↳ independence of judiciary [SCARA

v/s Union of India (2015)]

↳ federalism [Court of NCT v/s Union of India (2022)]

Thus, basic structure doctrine acts as "North Star of Constitution" [Justice P. Chandrasekhara] to ensure Parliament's power is limited.

1(d)

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Legal Services Authority Act 1987 is based upon the DPSP under Art 39 A which ensures free legal aid and equal access to justice.

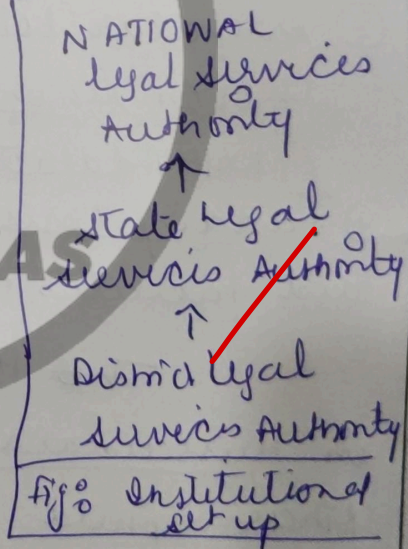
Features of Legal Services Authority Act [LSA]

① Coverage of vulnerable sections [S.12] - women, children, underserved, want, industrial workers

② Agency to frame legal aid policies (see fig)

③ Free access to legal aid - in preparing arguments, getting certified copy etc.

④ Court, tribunals and other quasi-



judicial bodies are covered for helping the poor

- ⑤ Lok Adalats as alternative dispute redressal mechanism [Art. 19]

Effectiveness of LSA

- ① Low quality of legal aid - noted by SC in Anokhi Lal v/s State of MP
 - ② Lack of awareness (cf) in Suk Das v/s Munarchal Pradesh, SC advised magistrates to inform the accused
 - ③ Irregular Lok Adalats
↳ even regional disparities in holding Lok Adalats
 - ④ Funding constraints to update legal aid facilities
5. The Hussa Justice Bhegwati in Hussainpara Khatri v/s State of Bihar upheld right to legal aid as part of Article 21 - thus, state must uphold the same.

1(c)

Directive Principles of state policy
(Art 36 to 51) and fundamental
rights [Art. 14 to 32] together constitute
the "conscience of the Constitution"
[Justice Chandrachud in Kesavanand
Bharati v/s State of Kerala].

[Means to the same end]

① Democracy: As per Dr. Ambedkar,
DPSPs aim at social and economic
democracy. De Facto IAS
to bring political democracy.

② Citizen welfare: Both aim at
well being of citizens.

→ to ensure right to education
in Unnikrishnan v/s State of AP, Art
46 and Art 21 read together

→ protection of environment (eg) in
MC Mehta v/s Union of India, Article
48A and Article 21 interpreted together

③ Expansion of citizen rights (eg) in
Kuldeep Singh v/s NCT, Chandigarh,
Art-40 (PRIs) and Art. 14 read together.

But both may conflict at times,

① Secularism (UCC under Art-44) and
Art 25 (Freedom of religion - in
Shayara Bano v/s Union of India)

② Protection of milch cattle [Art
48] and freedom of trade [Art 19(1)(g)]
in State of UP v/s Moti Ramal Kasab

Thus, need is to harmonize
both to usher social and economic
justice. Balance between two is
rightly called basic structure in
Minesha Mills v/s Union of India.

6/2

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3(a)

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Art 310 of the Indian Constitution !
incorporates the doctrine of pleasure
of the President towards' appointment
and removal of civil servants.

Contours of the doctrine

① Not unlimited :

↳ British doctrine of pleasure of crown
not applicable in India

↳ the doctrine is subject to :

- law framed by the Parliament
- limitations in the Constitution

[Art-14, Art-311, Art 310(2)]

② subject to judicial review :

↳ if the decision of suspension

or removal is malicious, arbitrary,
supreme court can review and
reinstate the wronged civil servant
[ECIL v/s B. Karunakar]

thus, even though the
civil servants hold the office during
the pleasure of the president, they
cannot be removed on whims and
fancies of the President.

- ③ President to act on aid and advice
- of the Council of Ministers [Shamsher
Singh Katara v/s Union of India].
- ④ consultation with the UPSC is
required before any suspension/
removal.

Safeguards available to civil servants

Art. 311 incorporates certain protections
against arbitrary doctrine of pleasure

① Removing authority - must not be inferior to the appointing authority

② Inquiry - no civil servant [including central, all India services, and those holding civil post] can be removed except after an inquiry.

In Union of S. state of Rajasthan v/s Sukh Raj Bahadur, it was held even temporary employees ^{entitled} ~~requested~~ to be given inquiry of ~~dismissal~~ entails civil consequences.

③ Notice: of the hearing as well as adequate opportunity of hearing.
UOI v/s E Bhasyan held even entitled to copy of inquiry report before final decision is taken.

The safeguards available to civil servants, thus, insure that

the President can grant fairness in line with Art-14.

Limitations to safeguards

① No inquiry if:

↳ competent authority determines it is impractical

↳ President notifies in public interest and security of state, it is not possible to hold inquiry

↳ when dismissal is based on conviction by court

② Defence personnel not entitled to aforesaid safeguards.

Thus, Constitution strikes a golden mean between Presidential pleasure and civil servants' security.

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3(6)

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Delegated legislation in India is permissible only if it does not result in excessive delegation.

However, the Constitution itself neither permits nor prohibits delegated legislation.

Doctrine of Excessive Delegation

① A judicially evolved principle

→ in In re Delhi Laws Act, Fazl Ali,
propounded that delegated legislation
is permissible provided :

- it does not lead to effacement/
abdication of legislature's power
- does not involve essential legislative
functions

• there exist policy, clearly laid out for executive's guidance.

② Further expanded by judiciary :

↳ Henry VIII clauses i.e. power to amend or repeal an Act cannot be delegated [Isabrum v/s Regional Transport Authority]

↳ taxation is not essential legislative function.

if delegated to a responsible body,
[Avinder Singh v/s
state of Punjab]

if delegated to a non-elected executive,
fix range of tax

↳ power to extend operation is permissible (if) to newer areas allowed in An Re Delhi Laws Act

Some extra-judicial limitations on excessive delegation

- ↳ Committee on Subordinate Legislation examines bills to determine if policy safeguards incorporated
- ↳ procedural safeguards like pre-publication [Harla v/s State of Rajasthan] and consultation.

Thus, doctrine of excessive delegation is a judicial innovation for ensuring excessive discretion to executive doesn't violate separation of powers and rule of law.

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8(c)

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Supreme Court under Art. 142 of the Constitution has power to pass appropriate directions, orders, judgment to enforce its decisions. It has been described as "power to do complete justice".

[Scope of "complete justice"]

- ① safeguard citizen rights (eg) in Kuldip Singh v/s Chandigarh, mayoral election quashed
- ② Go beyond the letter of law (eg) in Shilpa Sreejesh v/s Anirudhan, did away with mandatory 8 months before judicial mutual consent divorce

③ uphold accountability of executive :
in Vineet Narain vs CBI, issued
guidelines to strengthen anti-corruption
watchdogs like CBI, ED.

④ Further rule of law - (eg) to reinstate
dissolved state legislature under Art
356, Art 142 used [SR Bommai vs Union
of India]

nature of power?

Criticism of Art 142

① Plenary power - no express limitation,
on judiciary's power

② violates separation of powers (eg)
in TN Godavarman case SC set up

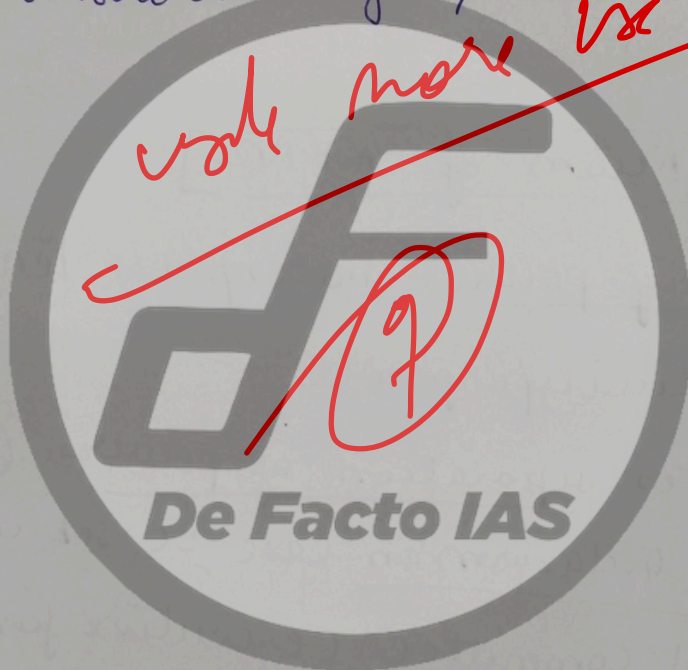
National Committee executive function

③ Judges can do no wrong :
immunity perpetrated

④ Judicial overreach criticized by
Supreme Court in Aravali Golf course
Vs Khadder Halls

Thus, power to do "complete
justice" must be delimited by
either amendment to constitution
or memorandum of procedure Case

code more



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4(a)

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Article 29 incorporates rights of any section of citizens to establish and administer own institutions.

Art 30, on the other hand, protects minority rights to establish educational institutions.

Right of administration under Art 29 and 30

Includes:

↳ right to decide fee structure
[Frank Anthony School case]

↳ recruit staff as per will

↳ elect the management of the school

↳ reserve seats specifically for

students belonging to own religious
or ~~educational~~ linguistic community

↳ set educational curriculum as per
own requirements

However, state can intervene to
ensure educative quality.

Does not include right to maladministration

maladministration can include
poor service conditions, degraded
pedagogy, lack of child care and
education.

① No right to maladminister under
Art 29 and 30?

↳ state can interfere to impose
minimum standards of education

[PA Inamdar v/s State of Maharashtra]

↳ if a minority educational institution

seeks affiliation, associated conditions
like co-curriculars, minimum teacher
qualifications can be imposed

[St. Xavier's College v/s State of Gujarat]

↳ standard secular standards of st
educational infra to ensure rights
under Art. 21A, not infringement under
Art 29 and 30. ✓

↳ exorbitant fees charged; poor
labour conditions; minimum wages
etc. ~~can~~ be amount to maladminis-
tration and can be curbed by
state [TMA Pat foundation].

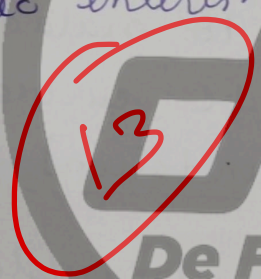
Thus, right to administer is
not violated if state intervenes to
stop maladministration.

Limitations on intervention

↳ follow constitutional limitations
- can't impose minimum reservation
under Right to Education Act 2009
(Art 15(5))

↳ must not be colourable exercise of
power [Pramati Educational Trust case]

Thus, Rights under Art. 29 and 30
are magna Carta of minority "cultural
and educational rights" but are limited
in public interest.



4(B)

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Parliamentary privileges refer to certain rights and immunities accorded to legislators to ensure they can function independently without fear or favour [MSM Sharma, searchlight case].

Scope of Parliamentary Privileges in Indian Constitution

① Two Types of privileges [Art. 105/194]

individual privilege

- ↳ right to free speech
- ↳ exemption from jury service
- ↳ no arrest before and ^{till} after 40 days of session

collective privileges

- (granted to house as a whole)
- ↳ right to publish own proceedings
- ↳ punish for own contempt
- ↳ expel a ~~misconducting~~ member

② Limited by other provisions of the constitution

↳ Fundamental right under Art. 20 and 21 supersede parliamentary privilege [In Re Keshav Singh]

↳ judicial review of exercise of expulsion powers [In State of Bihar v/s Raja Ram Red]

Scope delineated in Sita Soren v/s Union of India

① Immunity from criminal liability only when:

↳ privilege connected to core legislative function like voting on a bill, discussion during question hour

↳ privilege protects ^{acts} only during exercise of rights as legislature in the

session, not antecedent acts like accepting bribes prior to session

→ exercise of privilege must be linked to collective functioning of the house

Thus, this judgment overruled P.V. Narasimha Rao case which protected bribe-taking legislators from prosecution under Prevention of Corruption Act citing absolute immunity.

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4(c)

Union Public Service Commission is the watchdog of "meritocracy" in Indian bureaucracy. It is established under Art. 312 of the Constitution.

Powers and functions of UPSC [Art. 320]

① Recruitment

- ↳ by conducting competitive examinations for civil services posts
- ↳ covers central civil services [officers A and B] as well as all India services

② formulate joint recruitment schemes on request of states

③ Help states in recruitment on governor's request and after President's

approval

④ Advisory to the central government on qualifications, terms of service of civil servants ()

⑤ Consultation - President obliged to consult UPSC on matters of:

- ↳ removal, suspension
- ↳ promotion, reduction in rank
- ↳ disciplinary action
- ↳ refund/ reimbursement of civil servants for liabilities incurred during official functions

Maintenance of UPSC's impartiality

① Fixed remuneration

- ↳ charged on consolidated fund of India
- ↳ cannot be reduced to disadvantage during tenure

② Security of tenure : cannot be removed except on Presidential

order after Supreme Court inquiry finds guilty of misbehaviour.

Further, removal without consultation permitted in undischarged insolvency, unfit mind/body etc.

- ③ No reappointment - after completion of tenure
- ④ No government service post retirement
- ⑤ frames own staff rules/regulations

Thus, UPSC has been made an impartial & central recruitment agency by virtue of Constitutional safeguards.

De Facto IAS

9/2

5(a)

Montevideo Convention (1933) is an unadopted draft of agreement establishing criteria of statehood and state recognition.

Criteria of statehood

A state, to be recognised as a state under international law, must possess:

- ↳ well-defined territory
- ↳ stable population who owes allegiance to it
- ↳ sovereignty i.e. independence in conduct of state functions
- ↳ control, not just temporary, but permanent over the territory aforesaid

On state recognition

① Two theories exist on recognition of states:

↳ constitutive (by Oppenheim) - state becomes so by recognition by other states.

↳ declaratory [by Lauterpacht] - state acquires statehood on fulfilling above statehood criteria - irrespective of recognition by others.

Montevideo Convention adopts declaratory theory under Art-3 -

"political denial of recognition shall not deprive state of its statehood if criteria of state is fulfilled"

De Facto IAS

Universal jurisdiction refers to the extra-territorial jurisdiction over grave crimes which are regarded as crimes against the entire international community, irrespective of where they were committed.

[Rationale] → certain crimes are against erga omnes rights i.e. rights held by international community as a whole - thus, their commission violates obligations erga omnes.

Application to crimes under international law

- ① Recognition under international conventions:
↳ Convention against Torture - permits

punishment by any state on whose territory accused is found

↳ UNCLOS - piracy jure gentium can be punished by any member state

② Jus cogens violations under customary law:

↳ slavery punishable by any ~~member~~ state

↳ genocide committed anywhere can be universally punished (eg) Eichmann case where ~~Israel~~ punished German Nazi official

↳ violation of laws of war like war crimes punished in Habre case by Senegal against Chadian dictator.

Thus, universal jurisdiction ensures territoriality is no bar - criminals do not escape justice by crossing borders.

International law, according to Oppenheim, is the body of conventional and customary rules which states observe in their relations with each other.

Debate on nature of international law

① Is it a law at all?

↳ positivists like Austin, Holland call it positive international morality

↳ naturalists / modern theorists like Hall, Kelsen hold it as genuine law because ~~states~~ consider it so.

Today, identity of international law as a systematic law is undeniable.

Weak law or not?

Yes

- ↳ no effective world legislature to frame laws
- ↳ lack of effective sanctions regime
- ↳ ~~ineffective judicial redressal~~ (eg) Israel / Hamas genocide case [South Africa v/s Israel]

NO

- ↳ United Nations (General Assembly) effectively adopts Treaties like High Seas Treaty, Genocide Convention
- ↳ sanctions exist under Human Rights Treaties like ICCPR, ECHR.
- ↳ courts like ICC prosecute crimes (eg) Kunarac Case

It is undeniable that efficacy of international law hindered by UNSC veto, slow Treaty formation, political appointment in ICJ. Thus, it is indeed a weak law. (Stake supports this view)

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Consular immunity is a set of special privileges accorded to consular staff of one country in another country.

Rationale → to enable staff to function independently
→ they are extensions of sovereign state
→ One sovereign not subject to jurisdiction of another

Scope of Consular immunity

Vienna Convention on Consular Relations (1963) accords following immunities to consular staff:

- ↳ personal immunity : from arrest in relation to official acts
- ↳ inviolability of consular premises :

from search and seizure, attack etc.

- free communication facilities - with the sending state - wireless facility can be installed with host permission
- exemption from local taxes / customs in relation to official work
- protection of consular property

In consular staff in Tehran case (USA v/s Iran): Iran held liable when mob attacked US consular staff.

Limitations to consular immunity

- unofficial acts: if crime committed in personal capacity, can be declared persona non grata, even arrested.

- acts unrelated to consular work - injurious to security of host state like spying can forfeit immunities

Thus, consular immunity is not gateway to free passage to harm host states' interests

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5(e)

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Economic sanctions refer to unilateral or collective measures aimed at harming commerce, economic operations of targeted state - generally to ensure compliance with international obligations.

Types of economic sanctions

- ↳ Embargo - preventing ships of the target state from leaving own state
- ↳ blockade - preventing target state from plying to and from its own ports (e.g.) USA blockade of Cuba (1962)
- ↳ withdrawal of trade benefits - like India suspended Pakistan's mfn status after Uri attack.

Grounds of economic sanctions

- ① Force dispute settlement -
under WTO, if after DSU order,
state does not comply, unilateral
countermeasures permitted
- ② Enforce obligation - to & comply
with convention / custom like FATF
Black list to counter ~~an~~ terror
financing, money laundering.

- ③ ~~the~~ collective measures under
UNSC (Art 41) - ~~for~~ maintenance of
international peace and security

Thus, economic sanctions
serve multitude of purposes and
relevance seen in Russia / Ukraine
war where SWIFT facilities denied
to Russia.

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State succession under international law is a misnomer as there is no complete inheritance of all rights and obligations - according to Prof. DP O'Connell, state substitution in an existing territory is more appropriate.

Principles governing state succession

① Succession of newly independent states :

As per Vienna Convention on State

Archives and Debt Succession (1978)

↳ clean state doctrine (Art 16) -

newly independent states not bound by previous treaties.

→ Moving Treaty frontiers rule (Art. 17)

newly independent states are entitled to treaties which were signed by predecessor.

→ bound by treaties setting boundaries

Convention of State Archives and debts

→ debts: newly independent state not bound by previous debts, unless expressly agreed

→ contracts: not bound by private parties' concessions [Prum shibae v/s Union of India]

→ political commitments: can agree to what it wills and repudiate others

① extradition, investment concessions

② succession of other existing states:

→ Treaties: not entitled to be parties to existing unless all signatories agree

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- ↳ Contracts : bound by contracts with sovereign [maximatis palestine concessions case] but not private contract
- ↳ Debts : bound by all sovereign debts

③ Obligations of predecessor states -

convention on state archives and debts prescribes:

- ↳ duty to maintain all state records
- ↳ preserve all existing properties

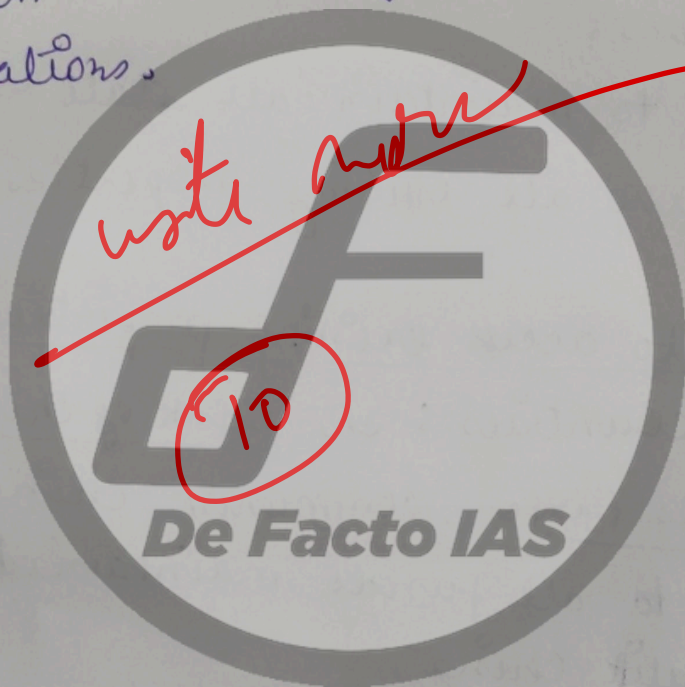
How state?

④ Right to access existing properties in foreign countries : in Bank of China v/s Wells Fargo, Communist China entitled to all funds maintained by Nationalist China.

⑤ No right of succession to membership
⑥ in Pakistan's claim to UN membership after partition, it was

asked to apply for UN membership afresh.

Thus, international law principles on succession are in accordance with rights of self-determination of newly independent states and help in maintaining continuity of obligations.



8(b)

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As per Art 2(4) of the United Nations Charter, threat or use of force against territorial integrity and political independence of another state is prohibited.

However, Art 51 of the Charter permits use of force in self-defence.

Use of force against non-state actors,

① Terrorists :

↳ United States considers use of force against threat or use of force by terrorist organizations as permissible (e.g.) in aftermath of 9/11 attack, it launched strike on

Al-Qaeda in Afghanistan

↳ NATO (Art 5) permits collective use of force - attack against one is considered attack against all. Used to launch pre-emptive strikes against individual terrorists like Osama bin Laden.

② Belligerents : those groups who have picked up arms against an existing government

↳ Myanmar junta use of force against Three Brotherhood alliance

↳ Bashar Al Assad use of rockets against Syrian Democratic Forces

③ Recent use of force against non-state entities like Hamas by Israel

Limitations to use of force

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- ↳ in self defence only [military and paramilitary Activities case]
- ↳ necessary and proportional (P)
avoiding indiscriminate weapons
like vacuum bombs or cluster
ammunition
- ↳ notification to UN security council
immediately
- ↳ halt when UNSC intervenes through
collective measures [Art-41]

Thus, use of force although
prohibited can be used in self defence.
Recent state practice suggests use of
force in self defence permitted even
against non-state actors.

Thesis (P)

8(c)

उम्मीदवारी को इस
हाथिए में नहीं
लिखना चाहिए
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International Criminal Court was established vide Rome Statute in 2002. It functions as a check on crimes of grave international concern

Role of ICC

- ① Prosecution : of individuals for 4 crimes [genocide, crime against humanity, war crimes and aggression] - initiated by Office of the Prosecutor.
- ② Investigation - by office of Prosecutor into reports of grave breaches / crimes stated above
- ③ Individual criminal responsibility :

of military commanders, officers, soldiers

उम्मीदवारों को इस
हानि में नहीं।
लिखना चाहिए।
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- ④ Punishment : upto 30 yrs or life imprisonment along with fine, victim compensation

Contributions of ICC

- ① Criminal justice : (eg) enslavement of females punished in Tadić case
- ② Accountability of perpetrators :
↳ irrespective of sovereign immunity
(eg) in Prosecutor v/s Omar Al Bashir —
- ③ Deterrence against humanitarian rights violation (eg) forced prostitution, conscription punished in Kunarac case.
- ④ Human rights of victims
↳ compensation scheme
↳ witness protection

→ rehabilitation programme by the
ICC Registry

Limitations of ICC

1 Criticism

- ① lack of jurisdiction over non-signatories.
- ② lack of enforcement: seen in arrest warrant issued against Russian President.
- ③ Overreliance on national cooperation
- to arrange ~~any~~ prison facilities, evidence collection etc.

Thus, ICC is a welcome step
but needs a reformation to function
as a sentinel on the quagmire.

Contract not important