

23/8/24

Law Optional Free Test No – 01
De Facto IAS

Total Time Alloted: 3 Hours

Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological 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 answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

Name: ABHISHEEL JAISWAL
Subject: Law
Phone: [REDACTED]

Teacher's Remark

9:00 - 12:05

Section - A

Q.1(a). Discuss the utility of Preamble in the Indian Constitution. (10 Marks, 150 words) (10 Marks, 150 words)

Nani Palkhiwala has called the Preamble as the "identity card of the Constitution".

Utility of Preamble

1. Source of authority that "We, the People" are sovereign.
2. Source of basic structure as per Keshwanand Bharti v. State of Kerala 1973 SC such as:-
 - ↳ liberty, equality, fraternity
 - ↳ justice - social, economic political.
3. Helps in interpretation of the Constitution when there is doubt.

Ex I have information

In Indian Young Lawyers Association v. State of Kerala 2018 SC, the term "Liberty of faith, belief, worship" was used to showcase the secular foundation along with equality of women in India. Thus, it is source of constitutional morality.

Whether part of Constitution?

In (Re Berubari Union 1960 SC),

~~the approach was that it is not part of the Constitution.~~

However, in Keshwanand this approach was changed and it was held it is part of Constitution.

Thus, Preamble helps the entire governance framework to ensure sovereign secular socialist democratic republic.

Q.1(b). Examine the doctrine of separation of powers. Also mention the relevance of this doctrine in India (10 Marks, 150 words)

Doctrine of separation of powers is nothing but extension of concept of equality between Executive, Legislature and Judiciary.
[State of Karnataka v. State of Tamil Nadu 2015]

Doctrine of Separation of Powers

It ensures that all three organs must remain within their jurisdiction without interfering in each other's domain.

This results into democratic functioning without concentration of power in one organ.

For instance, Executive (like Viceroy in Govt Act 1935) cannot

legislate or pronounce judgement
in own case.

Relevance in India

In India, as early as in
Re Delhi Laws 1951 SC, it was held
that it does not apply like America.
In India, there is functional separation
of power and not structuralist.

Can Thus, Supreme Court under Article 145
can make rules like Executive to
its efficient functioning. Or President
can promulgate Ordinance [Article 123]
for immediate action.

Thus, separation of power today
demands principle of comity which
results into cooperation over confrontation
amongst various organs.

Q.1(c). "Power of the Parliament to amend the Constitution is wide, but not unlimited." Do you agree with this statement? Discuss (10 Marks, 150 words)

Article 368 of the Constitution provides "constituent Power" to Parliament to amend the Constitutional provisions by way of "addition, variation or repeal".

Wide, but not unlimited

Yes, I agree that power of Parliament to amend is wide but not unlimited.

In (Keshwanand Bhaskar v. State of Kerala 1973 SC), the Supreme Court gave doctrine of basic structure. In fact, in (Bajrang Singh v. State of Rajasthan 1965 SC), Mudholkar J. was of view that Parliament cannot sit as const.

Constituent Assembly.

Now, if Parliament amends any thing which ameliorates the width provided to amend the Constitution and affects identity of Constitution, it will result into affecting basic structure. *How if Parliament passes the amendments in the manner of Basic Structure? (1980 SC)*

However,

agreeing with T.R.

Andhraujina, it is also true that judiciary by limiting the constituent power of elected Parliament, tinkers with concept of "separation of Power", "Supremacy of Constitution," etc.

Thus, in such circumstances all organs must be bound by constitutional restraint to respect will of people.

Q.1(d). Discuss major features of the Legal Service Authority act. How far it has been effective? (10 Marks, 150 words)

Legal Services Authority Act, 1987 was enacted in pursuance of Directive Principles under Article 39-A to "provide free legal aid" to poor and vulnerable.

Major Features of Legal Services Authority Act

1. Free legal aid to certain classes of people such as indigent, SC/ST, victims of mass disaster, etc.
2. Legal Aid Camp and awareness programme. [Section 3]
3. Establishment of Legal Service Committee upto District/Taluka level [Section 10]
4. Lok Adalats for speedy

disposal of cases [Section 21]. Effectiveness of Act

+ve

1. 4 crore + cases resolved by Lok Adalat in ~~last~~ 10 years.
 2. Access to senior advocates in case of matter of life [Kasab case].
 3. Promoted justice gap filling by increasing reach of justice.
- ↳ Supreme Court itself hearing cases under Lok Adalat.

-ve

1. Slow disposal of cases.
2. Parallel Kangaroo Courts.
3. Exploited by lawyers - prosecution.
4. Awareness camp is picnic.

Thus, there is need to revamp the sensitizing advocates and incentivizing them to ensure its success.

Q.1(e). Directive principles of state policy and fundamental rights are means to achieve the same ends. Elaborate (10 Marks, 150 words)

Directive Principles (Part IV) and Fundamental Rights (Part III) are part of same schema of the Constitution. On harmonious interpretation, they both aims to establish an egalitarian society.

Means to achieve same ends

They both are means that

- ↳ Fundamental rights:- it allows a person to explore individuality and exercise autonomy to become a fit person in society. [Article 14, 19, 21]
- ↳ DPSP:- They direct the state to provide conditions under which a person rights can exercise those cherished by reducing inequality [Art.

cl 39], education [Article 46], etc.

Initially, in (Champakai Dorabaiji v. State of Madras 1951 SC), the SC was of view that Fundamental rights are end in themselves and ~~DPSP must~~ subserve it.

However, this flawed reasoning of contestation between various Part of Constitution affected social justice reforms [Peramshwar Rao].

Later, in (Minerva Mills v UOI 1980 SC), ^{SL} Supreme Court ensured balance between the two. They both help in ensuring social and economic justice.

Thus, the end is pursuit of ensuring dignity of individuals and transformative constitution is achieved by treating DPSP & FRs as means.

Q.2(a). "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 (20 marks)

Article 356 of the Constitution owes its origin to Govt of India Act, 1935. However, at present it is only exercised for "failure of constitutional machinery" and not for whims and fancies to affect the legitimate government in power.

Always Matter of Controversy

From 1967 onwards, due to emergence of non-Congress regime this power was used.

In State of Karnataka v. Union of India (1978 SC), the Supreme Court was of view that Article 356 if invoked may be reviewed if legal

Good Part

grounds are there.

However, there was no ruling to establish as Supreme Court did not review emergency.

Later, Govt appointed Lakshmi Commission 1985 SC who recommended use of Emergency only in exceptional situation and not ~~on~~ ground of malafide, corruption, etc.

SR Bommai v UOI 1993 SC] $\Rightarrow$ This case gave guidelines for imposition of Emergency :-

- i) Can only ~~on~~ grounds like horse trading, loss of confidence.
- ii) Floor test ~~on~~ floor of House and not Governor's House.
- iii) Limited review of material under

Article 74(2) on which President formed
opinion on "report of Governor or
otherwise."

Application

In. (Jagdish Prasad v. Kalyan
singh 1998 SC), the Supreme Court
ordered composite floor test when two
CMs were ready to claim majority.

In. (Harish Rawat v. UOI 2016 SC),
the Supreme Court restored the Govern-
ment and revived the assembly
which was dissolved. Also, for 24
hours Chief Secretary was given power
to ensure fair floor test.

Recently, in (In Re Article 370
2024 SC), the SC was of view that
President must exercise this power

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Q.2(b). Justice should not only be done, but should manifestly and undoubtedly be seen to be done. Comment. (15 marks)

In (R v. Sussex), Justice Hewart was of view that "Justice should not only be done, but manifestly and undoubtedly be seen to be done."

The Role of Justice

Justice ensures "fair play in action". The authorities cannot use their discretion to affect liberty of citizen and have to conform to constitutional trust.

Further, justice must also remain alert to differences and sensitive to discrimination. This ensures curbing an authoritarian power and ensuring

the little man of his dignity.

In (X v. Secy of Health 2022 SC),
the Supreme Court gave justice to
women between 20-24 of pregnancy
who were unmarried. The Court called
S.3 of Medical Termination of Pregnancy Act
1971 to be biased and affecting gender
justice : .

The Principle of Natural Justice

This flows from law of nature
based on reasoning. This justice is
single as distinct from procedural
justice. It has two limbs:-

1. No one should be judge in own
cause :- Hence, it attacks on
overconcentration of power.

In (AK Kaipak v. UOI 1970 SC),
the applicant to IFS post was himself

examinee. This was against fair competition affecting other candidates.

However, In re CJI Gogoi Sexual Harassment 2019 case, the Supreme Court did not respect this principle and affected justice to women by when CJI Gogoi himself constituted committee of his brethren against case on himself.

2. Right of fair hearing → This ensures application of hand before decision is arrived.

with Bias In (Maneka Gandhi v UOI 1978 SC)

The SC emphasised on substantive justice driven by just, fair and reasonableness in any procedure.

Thus, justness in action ensures Satyameva Jayate, the motto of our National Emblem.

Q.2(c). A meaningful reform of the 'collegium' system is due for appointment of judges in higher judiciary. Do you agree? Support your argument. (15 marks)

The original text of the Constitution under Article 124 provides that the Judges of the Supreme Court will be appointed by the President in consultation with the CJI.

The Originalist Constitution

The will of the Constituent Assembly was that CJI must be part of consultative process but ultimately in a parliamentary democracy, the President is bound by aid and advice of the Council of Ministers and not CJI.

However, Prof. Baxi has called that "superecession of judges" during

Emergency brought politics in appointment.

The Four Judges Case

In (SP Gupta v. UOI 1982 SC),
the SC was of view that CJI consultation does not mean concurrence.

President can appoint as per COT aid & advice.

However, in (S. A. Dora v. UOI 1993 SC)
the SC through judicial interpretation
introduced collegium system (1+2
Judges) for appointment to HC/SC.
Now, consultation meant concurrence.

Later to reduce overarching power
of CJI, in (Re Judges Appointment 1993 SC)
the SC enlarged it to (1+4) → for SC
Judge appointment / HC Judge transfer &
(1+2) for HC Judge Appointment. Also,

if President sends back for reconsideration then all judges have to send the recommendation unanimously.

~~to improve this situation, 99th Constitutional Amendment 2015 was brought which was declared unconstitutional in entirety for first time as it affected basic structure of judicial independence [NJAC Case].~~

Yes, need for review is pending:

1. Case of Judicial overreach.
2. Rituals are ~~same~~ (nepotism, favouritism) but only priest have been changed (from Gol to collegium).
3. Affects other basic features such as Parliamentary democracy, rule of law, etc.

Q No where in world judges appoint judges. This setup has to go but by providing pragmatic alternative.

Q.3(a). Explain the doctrine of pleasure incorporated into the Indian constitution in respect of Civil servants. Highlight the safeguards for the protection of civil servants. (20 marks)

Doctrine of pleasure is an concept of monarchy system, where functionaries of government were under mercy of the Queen. However, in Indian Constitution it is applied with principle of constitutionalism.

Doctrine of Pleasure - Civil Servant

Under Article 310 of the Constitution, a person appointed to civil posts under Union is at pleasure of the President. He may be suspended, removed, dismissed, reduced in rank in certain circumstances of disciplinary action.

For instance, a Civil servant indulged in anti-national activity such as espionage can be dismissed.

Safeguards for protection

However, the Constitution through Article 309 [through enacting CCS, AIS Rules] and Article 311 has reduced the ambit of unlimited pleasure. It envisages:-

1. Principle of natural justice.
2. Dismissal, Reduction in rank or removal only after fair enquiry.
3. Must not be done by person subordinate to appointing authority.
4. Must be proportionate to the

misdemeanour.

In (PL Dingle v UOI 1967 SC),
a Civil servant in railways was
~~reduced~~ in rank below which he
was originally appointed. The Supreme
Court held it invalid application
of doctrine of pleasure. A person can
only be reduced in rank to
substantive post.

In (UOI v. Tulsiram Patel 1995 SC), the Supreme Court applied
Article 14, 21 in disciplinary proce-
ding to ensure adherence to
principles of natural justice. The court
held that any dismissal, removal
or reduction in rank must be

done under just, fair and reasonable
procedure.

exception to safeguards

1. In case of sentences by court, not needed $\rightarrow$ guilty for murder.
2. Would cause greater harm by providing predecisional hearing.
3. Impracticable to hold enquiry due to necessity.

~~not by reason of~~
~~tribunal~~

However, as a general principle the pleasure must be guided by sound constitutional pleasure. It must not be arbitrary or fanciful to affect impartiality of civil servants who have to act without fear or favour.

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Q.3(b). Excessive delegation is a judicially involved principle. Comment. (15 marks)

Delegated Legislation is today a necessary evil. It ensures administrative efficiency and fills up gap in legislation to fulfill the legislative intent.

The Limit of Delegation

In (Re Delhi Laws 1951 SC), the Supreme Court expressly held that what is permissible is delegation and not abdication. Parliament can only delegate ~~essen~~ non-essential legislative function.

However, in (Gwalior Rayon Mfg. Co. v. UOI, 1970 SC), Mathew J. (minority) was of view that unless and until

legislature is not abdicate its function, anything can be delegated.

However, the majority was of view that legislature has to lay down policy which must be guideline for executive to "when, how and upto what extent" they can exercise power under delegated legislation.

Excessive Delegation

Excessive delegation occurs when the Parliament fails to lay down any policy and guideline or in case of conditional legislation. This leads to unlimited conferring of power on Executive.

In (Hamdard Dawakhana v UOI),
the Parliament v/s 3 Drugs & Magic Remedies Act empowered the executive to

include any medicine within list of scheduled drugs. The Court held it to be excessive delegation as it do not lay any policy to exercise such power.

In (Ashok Kumar Thakur v UOI 2008 SC), OBC Reservation to Educational Institution Act, gave power to Executive to frame any layer guidelines. Held to be not an excessive delegation as executive has been provided guidelines.

Recently, in (Demonehsation Case 2024 SC), SC held S-26 of RBI Act to be within limits and not excessive delegation which authorise Govt to demonehsate notes.

Thus, this judge made law reduced the unlimited power of Executive and promote Parliamentary democracy.

Q.3(c). What is Meaning and scope of 'Power to do Complete justice' under article 142(1) of the Constitution (15 marks)

The Supreme Court is the not only guardian of the Constitution but also guardian of 142 Q+ Indians. The power to do complete justice is provided so that guardian can effectively exercise its power.

Meaning of Article 142(1)

Seewai, in his book is of view that Article 142(1) is only a procedural power. It aims to ensure procedural justice by empowering the Supreme Court to exercise its power within Constitution when laws are silent.

However, I do not agree with Seenuj.
On my humble opinion, Article 142⁽¹⁾
goes beyond procedural aspect and it
empowers the Supreme Court to act
as "superministerial" function to not
only nudge but steers the wheel of
Constitution.

Scope of Powers

1. Protect fundamental rights.
In (Ritesh Sinha (2) v. State of UP 2018 SC), the SC allowed only giving
voice sample which is not self
incriminatory under Article 20(3).
2. Legislative powers.
In (Common Cause v. UoI 2018 SC), the SC gave guidelines for

~~passive euthanasia and was declared as law under Article 141 & Article 142 until Parliament makes law.~~

3. Punish violator of laws.

In (Anil Ambani v UOI 2013 SC), the SC fined Anil Ambani for Rs 500 or for not adhering to court's timeline.

4. Restoration of the government.

In (Anil Jha v. State of Jharkhand 2005 SC), the SC restored the state government dismissed under Article 356.

However, the SC must be cautious to use this power sparingly only to meet ends of justice. Overreach is itself injustice to other organs and must be avoided.

only in extreme circumstances to
ensure unity and integrity of India.

Consequences of Proclamation

As per Article 356:-

1. Suspension of any provision of the Constitution except High Court power.
2. as per President Proclamation.
3. State Assembly in suspended animation.
3. Power to legislate shifts to Parliament which can delegate it to the President.
4. Governor becomes link and President acts through him.
5. President's Act under Article 357 can be used to legislate.

However, Soli Sorabjee is of view

that S.R. Bommai does not provide any clear ratione. Thus, SC must constitute larger bench to ensure certainty in law.

Section - B

Q.5(a). Elaborate on the significance of the Montevideo Convention in the context of state recognition. What criteria does it establish for statehood? [10 Marks]

State Recognition means when one state recognises the existence of other state. This not only has political but legal outcomes as well.

Montevideo Convention 1933

Montevideo Convention conforms to the ~~declaratory~~ theory of recognition. It is practical, in the sense that, once any state fulfils the criteria of statehood under Montevideo Convention, it automatically must gets recognition of other state.

Recognition in that case would be mere formality. and even if

Other states do not recognise, it will not change existing affairs of state.

Whereas, constitutive theory of recognition demands that states must be expressly recognised even after fulfilling Montevideo criteria. This is not much relevant now.

- Criteria for Statehood under Montevideo
- 1. Defined territory.
 - 2. Set of population.
 - 3. Government to govern.
 - 4. Rules and laws.

Therefore, it can be rightly said that Montevideo Convention has provided a comprehensive guidelines to recognition of existence of new state.

Q.5(b). Discuss the concept of 'Universal Jurisdiction'. How does it apply to the prosecution of crimes under international law? [10 Marks]

Universal Jurisdiction means any state, irrespective of effects of crime, ~~must~~ can exercise the personal jurisdiction over sets of people due to aut dedere aut punire.

Concept of Universal Jurisdiction

Certain crimes like genocide, piracy, etc. are crime against entire humanity. In such cases, there is not only moral but legal obligations, upon states to arrest and punish such people.

↳ Article 105 of UNCLOS → provides

for universal jurisdiction in case of piracy in high seas. This was reinforced by UN Resolution 2008 on Somalia.

Mod copy

Prosecution of Crimes under IL

It applies through:-

1. International Criminal Law → where
Nuremberg Charter, ICTR, ICTY, etc.
have punished individuals who committed crimes such as genocide.
2. International community is expected to provide evidences, witnesses, etc. to help in punishment.

5

However, it is not clearly established yet that whether universal jurisdiction is an entitlement or obligation.

My view is, it is entitlement considering right of self determination.

Q.5(c). International law is a 'weak law'. Do you agree with this statement? Give reasons. [10 Marks]

Scholars like Oppenheim were of view that International law is a weak law.

No, I do not agree

It is inappropriate to call international law as weak law as it is based on different concept from domestic law.

Only those who compare it with domestic law calls it weak law. The domestic law applies vertically where state can coerce weak.

But international law is based on concept of sovereign equality, territorial integrity and applies horizontally.

9m
strong
evidence
1. It
national
2. State
peace
3. It
T. Court
H
weaker
1. Treat
2. Dis
Agree
3. Rule
made
a law
lack
UPSC CSE 2024

In such case, it is not weak but strong in its unique sense. It is evident from:-

1. It established rule based international order. $\Rightarrow$ TRIPS $\rightarrow$ Patent regime.
2. States adhere to it for ensuring peace and prosperity. $\Rightarrow$ UN deliberations.
3. It protects even weak states.
 $\Rightarrow$ South China Sea Award (ITLOS)

However, it does have certain

weakness:-

1. Treaty - Protocol approach $\Rightarrow$ UNFCCC
2. Veto of UNSC $\Rightarrow$ Majority

Major listing as global terrorist.

3. Rule based order, where rule is made by dominant countries.

though, at cost of repetition, it is a law which is for different purpose and lack of sanction does not mean weakness.

Q.5(d). Define 'Consular immunity' and explain its scope and limitations under international law. [10 Marks]

Consular immunity means the host state is legally bound to provide immunity to consulars of different country. They must be allowed to protect interests of their citizens in host states.

Scope under International Law

The Vienna Convention on Consular Relations 1961, has established this customary international law into internationally bound treaty:-

1. Freedom from arrest, search & seizure in host state to consular.
2. Freedom to personally interact with own citizen in prison, cell, etc.

3. Ensuring best legal aid to citizens facing trial, prosecution in host state

Ex) Qatar → Nav Navy personnel. (A.)

4. Regular interaction to ensure not being treated cruelly.

In (Kulbhushan Jadhav Case), the

ICJ directed Pakistan to compulsorily provide him Consular Access. The

Pakistan Parliament was forced to enact

law by convening joint sitting.

1. No assured release from prison.

Limitations under IL

→ 2. Limited interaction only to check well being.

→ 3. States need to make laws.

Nevertheless, this immunity helps in preserving the interest of nation and promote mutual interest of all nations.

5/2

Q.5(e). What is 'Economic Sanctions'? On what grounds do States impose economic sanctions on other States under the aegis of UN? Explain. [10 Marks]

Economic sanctions means severing of economic ties such as trade relations, banking transactions, etc. by one state with other.

Economic sanction - Use of Force?

Article 2(4) of UN Charter prohibits use or threat of use of force by one state against other. Some scholars are of view that unilateral economic sanction in era of globalization

~~is not use of force.~~

It affects entire market of other nation which not only affects free trade mandate under GATT (WTO) but also perpetuate poverty, economic

fuel, etc.

Economic Sanctions under UN

Article 37-42 of UN Charter allows for collective measure by UN in case of international peace and prosperity. It usually arise in case of war, aggression, etc. as defined by UNSC under Article 38.

→ 1. Use of force
TE) Russia → SWIFT mechanism cancelled

↳ grounds → 2. collective measure [Article 51]

TE) Against Iran for Nuclear enrichment.

3. Retorsion, blockade, etc. to prohibit escalation of war.

However, economic sanctions must not be applied unwarrantedly as free trade promotes peace and reduces to turn skirmishes into war.

6

Q.7(a). Discuss the role and effectiveness of the International Court of Justice (ICJ) in resolving disputes between states. What do you understand about the compulsory jurisdiction of the ICJ? [20 Marks]

Article 92 of the UN Charter calls ICJ as "principal judicial organ" of the United Nations. It is also called as World's Court and is successor of PCIJ.

Role of ICJ in resolving disputes

- Article 35 of Statute of ICJ along with Article 93 of UN Charter provide it jurisdiction to decide disputes between state parties of UN or even non-state parties if they sign Statute of ICJ and ready to accept judgement, pay fees, etc.
- Settle Contentious cases between

states under contentious jurisdiction.

3. Advisory Jurisdiction under Article 36 of Statute of ICJ to UN bodies such as UNGA, UNSC or international bodies but related to their function [Advisory Jurisdiction on Use or Threat of Use of Force 1936 ICJ]

Effectiveness of ICJ in resolving disputes
Positive side

In many instance, the ICJ has helped in establishing peace and order and settling disputes amicably.

In US v. Nicaragua it came heavily on the US for training contras which was nothing but use of force against Nicaragua.

In (Iran Mayen Case), it helped in settling boundaries disputes with respect to Continental shelf and equitable principle under UNCLOS. This led to amicable settlement.

Negative Side

ICJ cannot enforce its jurisdiction. It relies upon state parties to adhere to its dictum. Also, the only option for parties is to go UNLC under Article 94(2) of ~~UN~~ Charter for enforcement.

In (US v. Iran) in hostage situation, it almost took 13 months to get hostage released. Recently, in Advisory Opinion in

Palestine Case 2024 ICJ, it was helpless
to fix liability of ~~ICJ~~ Israel due to
lack of jurisdiction.

Compulsory Jurisdiction of ICJ

Under Article 36 (2) of ICJ Sta-
tute, if any state is signatory to
optional clause then it is compulsory
bound by its jurisdiction for future
cases.

work mod of A-36

Provided, the other state must
also have signed the clause. Further,
state can oust jurisdiction through
exception in signing optional clause
say by not submitting to cases related
to territorial disputes (e.g. Greece).

ICJ must be further empowered,
in today's era. This would help in
restoring legitimacy of global order.

12!

Q.7(b). Analyse the role of the World Trade Organization (WTO) in the establishment of a New International Economic Order. Discuss its impact on global trade. [15 Marks]

WTO was established in 1995 post ~~negotiation~~ ^{signing} of Uruguay Round. through Marakhash Treaty. It encompasses three agreements within viz, GATT, GATS and TRIPS. ✓

Role of WTO in establishment of NIEO

1. Promotes free trade. through two principles:-

↳ National Treatment [Article 1]

↳ Most Favoured Nation Principle [Art 3]

In (Korea Beef Case), when Korea discriminated in its national market with respect to imported beef, the

Dispute Settlement Body found it to be violation of National Treatment.

2. Promote fairness by establishing Dispute Settlement Body, Appellate Body to protect even weakest state.

[WTO Agreement on Agriculture → provide de minimis rule for MSP].

3. Helps in reducing poverty and promoting export Generalised System of Preference.

4. Promotes national security, environmental concerns over free trade. Thus, leading to flexible approach [Article XX, XXI of GATT]

5. Prevents dumping of goods leading to protection of domestic industries [Agreement on Dumping].

Impact on Global Trade

- | +ve | Negative (-ve) |
|---|--|
| 1. Promotes globalization and free flow of goods, services and people | 1. Protectionism increased due to trade war
T ₂ VS CHIPS Act |
| 2. <u>Free Trade Area</u> for reducing tariff barriers. | 2. Paralysed Dispute Settlement Body due to <u>non-appointment</u> . |
| 3. <u>Non-tariff</u> barriers such as <u>Carbon Border Adjustment Mechanism</u> are not promoted. | 3. Free trade is <u>myth</u> as <u>tariff or duties</u> are high upto 200-1. in many countries |
| 4. Leads to promoting <u>global supply chain</u> | 4. Public health avoided T ₂ Patent during COVID. |
- There is need of one more round of initiatives like Doha Round to relook into making WTO functional to ensure free trade.

In ch 2 n 1

Q.7(c). "Climate change poses a significant threat to international peace and security."
Discuss the international legal framework addressing climate change and suggest ways to strengthen it. [15 Marks]

Climate Change has now changed "global warming" to "global boiling". This is evident from WMO Report where 2023 was noted to be hottest year in last 100 years.

Threat to international peace & security

1. Submergence of low lying state by rise in sea level leading to
 - ↳ climate refugees
 - ↳ end of indigenous population
 - ↳ depletion of resources leading to poverty.

2. Increase contention for resources

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es which are limited
TE critical minerals.

International Legal Framework

International Environmental Law has both soft law as well as hard law approach. Apart from customary international law such as sustainable development, precautionary principle, etc. there are following regime:

1. Convention against Climate Change
CUNFCCC 1992
 - ↳ Kyoto Protocol → now ended
 - ↳ Paris Agreement [Article 6].
2. Convention on Biodiversity 1992.
3. UNCLOS [Article 202] → 10

perfect marine environment]

↳ Biodiversity Beyond National Jurisdiction Treaty 2023 (High Seas Treaty).

4. GATT (Article XX)

*India more
conventions*

5. Trail Smelters Case.

Ways to Strengthen it

- 1. Effective Climate Finance
↳ Enforcement of Green Development Fund
- 2. International Cooperation
↳ International Solar Alliance
Teg Alliance

3. State Responsibility
↳ EIA Notification for transboundary pollution.

Thus, effective fight against climate change need global cooperation and India through Mission LIFE can play role of Vishwaguru.