

5. Jus Cogens

Prelims Level: International Policies & Schemes

Mains Level: GS-II Important International Institutions, Agencies and Fora-their Structure, Mandate.

Why in News?

- The US has threatened to target few historical sites if Iran retaliates to attack US in revenge. This is a breach of JUS COGENS as targeting cultural sites amounts to a war crime.

Jus Cogens:

- JUS COGENS or ius cogens, meaning “compelling law” in Latin, are rules in international law that are peremptory or authoritative, and from which states cannot deviate.
- The jus cogens rules have been sanctioned by the Vienna Conventions on the Law of Treaties of 1969 and 1986. According to both Conventions, a treaty is void if it breaches jus cogens rules.
- Article 64 of the 1986 Convention, “Emergence of a new peremptory norm of general international law (jus cogens)”, says: “If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.” So far, an exhaustive list of jus cogens rules does not exist. However, the prohibition of slavery, genocide, racial discrimination, torture, and the right to self-determination are recognised norms.
- The prohibition against apartheid is also recognised as a jus cogens rule, from which no derogation is allowed, since apartheid is against the basic principles of the United Nations.

Vienna Convention on Law of Treaties:

- Article 53 of the 1969 Convention says: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm.
- From this no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.
- Article 64 says- If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.
- Besides treaties, unilateral declarations also have to abide by these norms.