



KAMKUS COLLEGE OF LAW
LL.B. VIth SEM
LAW OF HUMAN RIGHTS
CODE (K-6003)
UNIT-I

Detailed Questions Answers

Q.1. Define the term Human Rights. Discuss the development and concept of human rights law in India.

ANS:-

Introduction

Human rights are a special sort of inalienable moral entitlement. They attach to all persons equally, by virtue of their humanity, irrespective of race, nationality, or membership of any particular social group. Human rights belong to an individual as a consequence of being human. The term came into wide use after World War II, replacing the earlier phrase "natural rights," which had been associated with the Greco-Roman concept of natural law since the end of the Middle Ages. As understood today, human rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history. They are conceived of as universal. Universality of human rights is controversial, applying to all human beings everywhere, and as fundamental, referring to essential or basic human needs.

Human rights are based on the principle of respect for the individual. Their fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity. They are called human rights because they are universal. Whereas nations or specialized groups enjoy specific rights that apply only to them, human rights are the rights to which everyone is entitled, no matter whom they are or where they live, simply because they are alive.

Meaning and Definition

Human rights may be regarded as those fundamental and inalienable rights which are essential for life as human being. Human rights are derived from the principle of Natural Law.

The expression "human rights" denotes all those rights which are inherent in our nature and without which we cannot live as human beings. In other words Human Rights are the rights



which are possessed by every human being, irrespective of his or her nationality, race, religion, sex etc., simply because he or she is a human being.

Human Rights and Fundamental Freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our physical, spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protect.

According to Section 2(1) (d) of The Protection of Human Rights Act, 1993, “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

According to Justice Durga Das Basu, “Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a member of human family, irrespective of caste, colour, creed, place of birth, sex, cultural differences, or any other consideration” In short D.D. Basu defined human rights as those rights, which every individual must have against the State or public authority by virtue of his being a member of the human family irrespective of any other considerations.

According to R.J., “human rights are the rights that everyone equally has by virtue of his very humanity and also by virtue of his being grounded in an appeal to our human nature”.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state.

Justice Nagendra Singh of International Court of Justice opined that respect for the human personality and its absolute worth, regardless of colour, race, and sex are the very foundation of Human Rights.

Origin, Development and concept of Human Rights

The history of origin and development of human rights is very fascinating. The roots of human rights are found very deep in the eternity in the ancient and ancient most cultures which have been rooted out by passage of time and rule of human atrocities or barbarianism of certain tribes.



The origin and development of Human Rights has been on two bases, the first is the National and the second is the International.

On the National base

The conception of Human Rights got its breed to originate and develop in the form of religion in different countries and in different times. The conception may be felt to originate in the ideas of mercy, kindness and pity on human beings in various scriptures. Vedas are the most ancient or the first religious book of mankind, revealed in Aaryavarta the great land of Aryans. Much earlier than the Greeks and Romans, Ancient Indian Philosophers and thinkers expounded a theory of higher moral law of Dharma about 5000 year ago, with a view to establish harmonious social order free from the traces of conflicts, exploitations and miseries. It is this Dharma of the Vedic period the supreme law, which sustained individuals together in society and provided for the protection of the right of man.

In the Greek and Roman Laws, the principles of International Law appear to be attached with the principles of natural justice. Plato (427-348 B.C.) was one of the earliest writers to advocate a universal standard of ethical conduct. The stoic philosophers found all creatures being pervaded by a Universal Power, which principle was already established in the period of Mahabharata (5000 BC) By the end of the middle ages, the liberal political principles were affiliated with the principles of natural justice and a social need of recognition of human rights was felt to be turned into reality rather a mere philosophy. During this very period, the failure of the rulers to fulfil the mandates of natural law and unexpected liberty of individual expression, the principles of natural law took their steps to take shape of human rights.

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of British rule. The origin of this ideal in India lies in the history of India especially in the struggle for freedom against the British rulers. Charter of Liberty is one of the steps towards the realization and implementation of Human Rights. Magna Carta of 1215, Petition of Rights of 1628, Habeas Corpus Act of 1679, Bill of Rights of 1689 are some of such steps taken in England.

Modern conception of natural law bearing Human Rights



It was particularly the 17th and 18th centuries in which the conception of natural law and the natural rights inherent in it were originated. During the 18th century John Locke broadly discussed that certain rights are apparently available to a person being a human being only, because in the state of nature they existed and the main rights of those were the right to life, right to liberty and right to property. When the humanity entered the civil social life pursuant to social contract, then the enforcement only of such rights was surrendered to the State and not these rights themselves. The state which cannot ascertain these reserved rights whereas the State itself exists under that contract that obliges it to protect the interests of its members that is the subjects or people then it gives birth to a responsible and popular revolution.

Social Contract Theory

Social contract theory was another cause which survived the conception of human rights and pressed its power for the development of it. These social contract writers revitalized the concepts of natural rights and put forward certain dynamic contents which greatly influenced the American and French Revolution.

- 1. American Revolution:** The American Revolution period from 1763 to 1788 was a very important age of constructive ideas and progressive expectations. There were many factors which contributed towards the rise of this revolt, for instance, the growing importance of the notion of natural rights teachings of the writers of social contract doctrine, the British Bill of Rights of 1689 and the coercive actions of George III (1760-1820) and his predecessors.
- 2. French Revolution:** The Declaration of the Rights of Man and Citizen was adopted on August 26, 1789 by the representatives of the French people in the National Assembly. The said Declaration contains some important human rights which are as follows-
 - Men are born and remain free. (Article-I)
 - The natural and imprescriptible rights of man, such as, liberty, property, security and resistance to oppression are to be preserved. (Article-II).
 - No man may be indicted, arrested or detained in cases except in accordance with law. (Article-VII)



- Only strictly necessary punishments may be established by law and no one may be punished except by virtue of a law. (Article-VIII)
- Every man being presumed innocent until judged guilty. (Article-IX).
- No one may be disturbed for his opinion in religion (Article-X).
- Freedom of opinion is one of the most precious of the rights of man (Article-XI)
- Property being an inviolable and sacral right is not to be deprived of except for an obvious requirement of public necessity, certified by law and on condition of just compensation in advance. (Article OXVII).

At the international level, rules and procedure for protection of human rights were developed when there were abuses of the rights of the foreigners by local authorities. A number of international tribunals and claims commission were set up throughout the nineteenth century to maintain minimum standards for treatment of aliens in a country. The community of states has increasingly realized that the welfare of individual is a matter of international concern irrespective of his nationality. One of the achievements in this regard in the international field was to confer international protection to nationals of a state who was minorities within its territory. At the end of the First World War, the principal Allied and Associated Powers concluded a series of treaties with countries in Eastern Europe and the Balkans which contained provisions to the effect that all inhabitants of a state irrespective of their language, race or religion were to be given full protection of life, liberty, and free exercise of any creed, religion or belief. After the formation of the League of Nations in 1919 nationals who belonged to social, religious or linguistic minorities were assured the equal treatment and security in law and in fact as other nationals. All these stipulations constituted obligations of international concern under the guarantee of the League of Nations. These treaties were ineffective after some years. After the Second World War the United Nations was not indifferent to protection of minorities.

After the recognition of the French Declaration, the Western and Eastern European countries, Soviet Union of Russia and Asian and some other countries of the world also recognized human rights in their Constitutions.

The expression 'Fundamental Rights' of man was stated in the declarations and constitutional instruments of many states. For instance, the Declaration of Independence of the Thirteen *United*



States of America in 1776 (The Virginia Declaration, 1776), the constitution of the United States of 1787 with amendments in 1789, 1865 and 1919 specified a number of rights of man. The Virginia Declaration of Rights affirmed that all men are by nature equally free and independent and have certain inherent rights. Since the beginning of the nineteenth century it was recognized by the constitutional law of many states that human beings possess certain rights, worth of the human personality began to be realized.

Virginia Bill of Rights

This Bill of Rights is a Declaration of rights made by the representatives of Virginia and contains a set of human rights which are as follows-

1. That all men are by nature equally free and independent and have certain inherent rights, namely, the enjoyment of life, liberty and acquiring and possessing property (Section 1)
2. That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community (Section 4).
3. That an accused has a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses to call for evidence in his favour and to a speedy trial by an impartial jury, nor can he be compelled to give evidence against himself; that no man can be deprived of his liberty except by the law of the land or the Judgement of his peers. (Section 8).
4. That no cruel and unusual punishment ought to be imposed. (Section 9).
5. That the freedom of the press is one of the great bulwarks of liberty. (Section 12)
6. That all men are equally entitled to the free exercise or religion according. to the dictates of conscience.

On International Base

At the end of the First World War of 1919, some attempts on modest level were made through the treaty of Versailles to promote and universalize human rights, but it met with no success. It was consistently realized that the rights of individuals must be universalized so that it may be guarded against its violation by one's own state. Influenced by such desires, the Institute of International law initiated measures to study and formulate the human rights provisions. Its pronouncements had no validity except the prestige of the members which they held. Its chief



aim was "to extend to the entire world international recognition of the rights of man". Accordingly, a proclamation of the right of man was issued by it in 1929. In all six articles were adopted which prescribed the duties of every state.

After the end of the First World War, some constructive changes were begun to be reflected. They began to take a deep interest in the protection of Human Rights. In the conduct and practice of League of Nations the evidence of the protection of the rights of the minorities and their right of self-determination are found. The special consequential benefit of the League of Nations, the Anti-Slavery convention (convention in protest of Slavery Custom) of 1922 may be taken. In the same way a child welfare committee prepared the Geneva Declaration on the rights of the child, and inspired many nations to accept it. However, the League of Nations rejected this declaration in 1924. In other spheres of the international law also the universal interest for individual rights was visible. The International Labour Organization, the Committee on International Intellectual Cooperation and the Health Committee which was formed under the auspices of the League of Nations are worth mention. These organizations worked to form an atmosphere by their actions for the entry of the League of Nations therein, so that human states for workmen at the international level may be ascertained.

Concept of Human Rights

The concept of human rights is based on the belief that every human being is entitled to enjoy her/his rights without discrimination. Human rights differ from other rights in two respects.

Firstly, they are characterized by being:

- a) Inherent in all human beings by virtue of their humanity alone (they do not have, *e.g.*, to be purchased or to be granted);
- b) Inalienable (within qualified legal boundaries); and
- c) Equally applicable to all.

Secondly, the main duties deriving from human rights fall on states and their authorities or agents, not on individuals.

One important implication of these characteristics is that human rights must themselves be protected by law ('the rule of law'). Furthermore, any disputes about these rights should be submitted for adjudication through a competent, impartial and independent tribunal, applying



procedures which ensure full equality and fairness to all the parties, and determining the question in accordance with clear, specific and pre-existing laws, known to the public and openly declared.

The concept of human rights can be understood as universal, incontrovertible and subjective. Human rights are universal since they belong to every human being without any distinction of ethnicity, race, gender, religion, or type of government. It is incontrovertible, that is, they are absolute and innate. Human rights are subjective as they are properties of individuals who possess them because of their capacity for rationality, agency and autonomy.

Today, the concept of human rights includes civil and political rights or public liberties, economic, social and cultural needs particularly with regard to development, the environment and self-determination. As said, it is the state's responsibility to protect and promote human rights. It is also the duty of the state to create conditions for peaceful existence which enable human rights to be enjoyed by every individual in that state. But with the increasing risk of violation of human rights resulting from the activities of the state as well as non-state actors, international law, whether in its universal or regional manifestation, also guarantees and promotes the enforcement and observance of human rights

Conclusion

Thus the term 'Human Rights' came somewhat late in the vocabulary of mankind. It is a twentieth century name for what has been traditionally known as natural rights or the rights of man. The term 'natural law' was replaced because the concept of natural law had become a matter of great controversy and the phrase 'the rights of man' was found unsuitable as it was not universally understood to include the rights of women.

Q.2. Write an essay on Human Rights and the United Nations Charter.

Ans.

Introduction

The *United Nations Charter* sets forth the "inherent dignity" and the "equal and inalienable rights of all members of the human family." Upholding these human rights principles as "the foundation of freedom, justice, and peace in the world" is fundamental to every undertaking of the United Nations.



These are some steps of United Nations for the protection of human rights-

- International Bill of Human Rights
- Universal Declaration of Human Rights, 1948
- International Covenants on Civil and Political Rights
- International Covenants on Economic, Social and Cultural Rights
- International Covenants on Inhuman acts

At the San Francisco conference it was expressed by several delegates that the United Nations should establish an International Bill of Rights. Although that could not be done, it was well realized by the members that it should be the obligation of the international community to cooperate in eradicating the scourge of war, and they were therefore determined that the promotion and respect for human rights which at present are so important and so conspicuous be an integrated part of the U.N. Charter.

Provisions of the Charter concerning Human Rights

Main provisions of the charter are-

1. The Charter is based on the principle of the sovereign equality of all its Members.
2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.
3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from



giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The charter contains a number of provisions for the promotion of human rights and fundamental freedoms in the *preamble and in Articles 1, 13(1) (b), 55, 56, 62(2), 68 and 76(c)* which are as follows-

In the *Preamble to the Charter* it has been expressly and specifically declared that -

We the peoples of the United Nations determined

- To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- To promote social progress and better standards of life in larger freedom.

The purpose of the United Nations as Given in Article 1 of the Charter

Are-

1. To maintain international peace and security and to that end to take effective executive measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or



settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.
3. To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging without distinction as to race, sex, language or religion, respect for human rights and for fundamental freedoms for all; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.
5. Article 55 provided that the United Nations shall promote –
 - a) higher standards of living, full employment and conditions of economic and social progress and development;
 - b) solutions of international economic, social, health and related problems and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language; or and the subjects in paragraphs- (a) and (b) are not rights at all but only policies that should be promoted.
6. Article 56 provided that the members of the United Nations pledged themselves to, take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55.
7. Article 62 of the Charter authorized the Economic and social council to 'make' recommendations for the purpose of promoting respect for, and observance of human rights and Fundamental freedoms for all.
8. Under Article 64, the Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies.
9. Article 62 of the Charter authorized the Economic and Social Council to make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all.



10. Article 68 directed the council to set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions. The commission of Human Rights and the commission on the status of women are the subsidiary bodies of the economic and social council.

11. Para (c) of Article 76 stipulated that one of the basic objectives of the trusteeship system is to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion and to encourage recognition of the interdependence of the peoples of the world.

In addition to the above provisions, the charter has referred repeatedly to the concept of Fundamental Human Rights, 'the dignity and worth of the human person,' 'equal rights', 'justice', 'social progresses and fundamental freedoms - The Charter devoted three chapters to the self determination of peoples.

It is to be noted that the Charter is a global constitution without a bill of rights. It neither defined the human rights nor was they enumerated therein. There is no provision in the Charter laying down express verb is that there is a legal obligation resting upon nations to observe human rights and fundamental freedoms. The guarantee for the protection of human rights and fundamental freedoms was also not provided in the Charter. Although it was proposed by the Latin American States during the drafting of the Charter at San Francisco conference that it should contain an International 'Bill of Rights', a specific list of rights could not be prepared due to lack of sufficient time, and therefore promotion as well as protection of human rights was explicitly rejected. Provisions relating to human rights in the Charter are therefore general and vague. However, since the adoption of the charter, international human rights law has been developing in an unprecedented way, and presently, it has become a substantive part of international law as a whole.

Promotion and protection of Human Rights by the United Nations

Promotion and encouragement of respect for and observance of human rights and fundamental freedoms is one of the purposes of the United Nations. The United Nations in the past has been able to promote and protect human rights by a number of ways which are as follows-

- Human Rights Consciousness.



- Codification of the Law of Human Rights.
- Monitoring of Human Rights.
- Procedure of Individual's Complaints.
- Compilation of Information on the Violations of Human Rights.
- Examination of Human Rights Situations.
- Coordination of Human Rights Activities.
- By Providing Advisory Services.

The United Nations General Assembly

The United Nations currently comprises 185 member states, all of which belong to the General Assembly. The General Assembly controls the UN's finances, makes non-binding recommendations, and oversees and elects members of other UN organs. It is the General Assembly that ultimately votes to adopt human rights declarations and conventions, which are also called treaties or covenants. For example, in 1948 when the UN Commission on Human Rights had completed its draft of the Universal Declaration of Human Rights, the General Assembly voted to adopt the document.

The United Nations Commission on Human Rights

Made up of fifty-three member states elected by ECOSOC the UN Commission on Human Rights initiates studies and fact-finding missions and discusses specific human rights issues. It has responsibility for initiating and drafting human rights declarations and conventions.

ECOSOC also supervises intergovernmental organizations (IGOs), which are specialized agencies that function independently with their own charter, budget, and staff but are affiliated with the UN by special agreements. IGOs report to the ECOSOC and may be asked to review reports from certain UN bodies that are relevant to their area of focus.

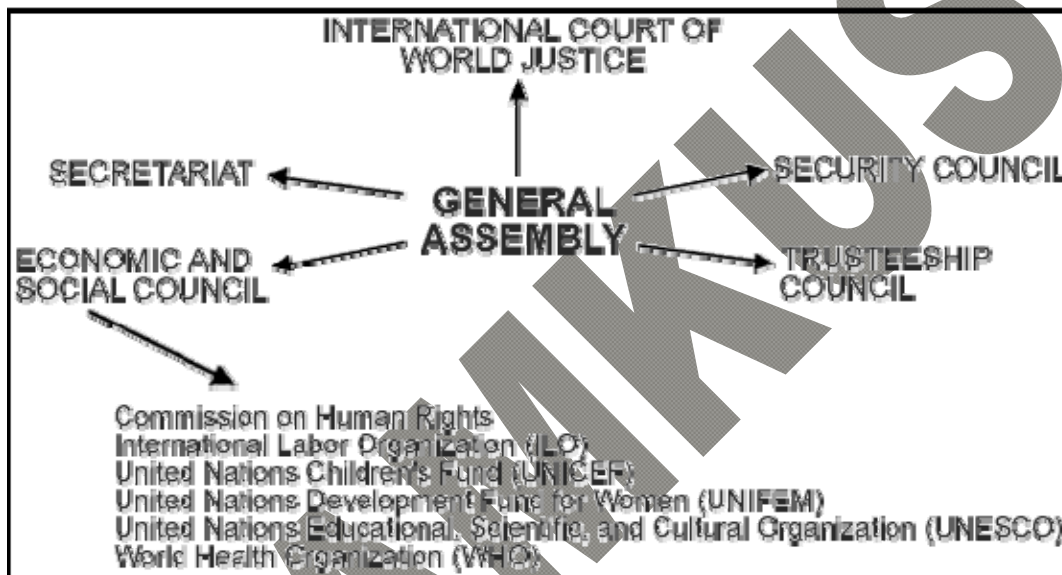
Other United Nations Bodies and Human Rights

The UN **Security Council**, comprising fifteen member states, is responsible for making decisions regarding international peace and security. It can make recommendations and decisions for action, including providing humanitarian aid, imposing economic sanctions, and recommending peacekeeping operations. The Security Council has been responsible for establishing international tribunals to prosecute serious violations of humanitarian law. For



example, special tribunals have been set up to prosecute war crimes in the former Yugoslavia and acts of genocide in Rwanda. The Secretariat is the administrative arm of the UN, responsible for overseeing the programs and policies established by the other UN organs.

In addition to the General Assembly, in which all member states are represented, there are five other main bodies of the United Nations that deal with different types of international concerns and administrative tasks.



Although human rights are fundamental to all functions of the UN, human rights issues mainly fall under the **Economic and Social Council (ECOSOC)**. This council of fifty-four members elected by the General Assembly is responsible for coordinating all economic and social work of the UN and its affiliated institutions.

The Economic and Social Council oversees the work of many intergovernmental organizations (IGOs) and certain UN commissions, such as the UN Commission on Human Rights.

Some intergovernmental organizations that work to protect Human Rights

International Labour Organization (ILO) – Develops international labour standards and provides technical assistance training to governments.

United Nations Children's Fund (UNICEF) – Works with other UN bodies, governments, and nongovernmental organizations to provide community based services in



primary healthcare, basic education, and safe water and sanitation for children in developing countries. Human rights are fundamental to its programming.

United Nations Development Fund for Women (UNIFEM) – Promotes economic and political empowerment of women in developing countries, working to ensure their participation in development planning and practices, as well as their human rights.

United Nations Educational, Scientific, and Cultural Organization (UNESCO) – Pursues intellectual cooperation in education, science, culture, and communications and promotes development through social, cultural, and economic projects.

World Health Organization (WHO) – Conducts immunization campaigns, promotes and coordinates research, and provides technical assistance to countries that are improving their health systems.

Conclusion

The United Nations (UN) is one of the most important international organizations to ever be assembled. Since it was founded after the end of World War II in 1945 to replace its predecessor, the League of Nations, the UN has strived to maintain world peace and facilitate cooperation in solving international problems. Without the watch of the UN, many more international issues between states would have ended in serious conflicts and numerous human rights violations would have occurred throughout the world. The UN has proven to be very successful in meeting its goals since its inception.

Q.3. Explain the method of implementation of Human Rights provided under the international covenant on Civil and Political Rights, 1966.

Ans.

1966 International Covenant

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations General Assembly on 16 December 1966. The ICCPR was to take effect ten years later in all nations that had become state parties. A sufficient number of states had become parties so the ICCPR took effect as planned in 1976.

What are 'Civil and Political rights'?



Human rights are commonly divided into ‘civil and political rights’ and ‘economic, social and cultural rights’. Civil and political rights protect individuals’ freedom from interference by the State and make sure that everyone can take part in civil society. They include freedom of speech, freedom of assembly and the right not to be tortured.

The United States Senate ratified the ICCPR in June 1992. The Senate took exceptions to this treaty. Amongst those exceptions are the provisions that the human rights recognized by this treaty shall not be enforceable in courts in the United States. Thus the United States Senate denied Americans the legal power to secure and enforce the human rights recognized by this international covenant.

The ICCPR contains important articles which appear to protect the child from involuntary circumcision. **Article 24** provides a right of every child to special protection. This is to be applied without regard to race, colour, sex, religion, social origin or birth. The right is universal and protects every child without exception. Article 9 provides a right of security of person. Article 7 provides a right to freedom from torture, and cruel or degrading treatment. Article 26 provides a right to the equal protection of the law for all persons. Read together it appears that a child would have a right to special protection of the security of his body, freedom from torture, and cruel and degrading treatment. The special protection of the law is to be applied universally for all persons. This would seem to mean that the child is entitled to protection from circumcision by law.

Article 18 provides that everyone has a right to adopt a religion. This means that children may adopt a different religion from their parents. A circumcision may interfere with this right of free choice of religion.

These articles may be enforceable in court in some nations other than the United States.

International Covenant on Civil and Political Rights

The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the *Universal Declaration of Human Rights* the ideal of free human beings enjoying civil and political freedom and freedom from fear



and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the *Charter of the United Nations* to promote universal respect for and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,



notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.



Article 17

1. No one shall be subject to arbitrary or unlawful interference neither with his privacy, family, home or correspondence nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 24

1. Every child shall have, without any discrimination as to race, colour sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.



Article 27

In those States in which ethnic, religious or linguistic minorities exist persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Short Answers Questions Answers

Q.1. What are the sources of human rights?

Ans. Sources of Human Rights

International human rights law derives from the variety of sources which are as follows-

1. International Treaties

A number of multilateral treaties relating to human rights are in force which is legally binding on those states which are parties to them. The most important amongst them is the United Nations Charter itself which is binding on all the states in the World and establishes at least general obligations to respect and promote human rights. Regional treaties on human rights such as European Convention on Human Rights, American Conventions on Human Rights and African Charter on Human and People's Rights are also legally binding on the contracting states and they therefore are the sources of International human rights law.

2. International Custom

The 1987 Restatement (Third) of the Foreign Relations Law of the United States takes the position that customary International Law protects at least certain basic human rights. A number of rights are at present included within customary international law and consequently they are the sources of International Law.

3. Other International Instruments

A great number of international declarations, resolutions and recommendations relating to human rights have been adopted under the auspices of the United Nations which are the sources of



International law. The most important of these is the Universal Declaration of Human Rights of 1948 which possesses a moral or political force that may be useful in persuading government officials to observe human rights standards.

4. Judicial Decisions

Decisions of the various judicial bodies are relevant in the determination of the rules on human rights issues.

For example- International Court of Justice European Court of Human Rights a Regional Court.

5. Official Documentations

Official documents of the United Nations and its subsidiary bodies have produced a vast amount of documentation relating to human rights matters. For Example- Human Rights Law Journal, Human Rights Review, and European Law Review.

Q.2. What are the theories and kinds of human rights?

Ans.

Theories of Human Rights

Views of the jurists on the questions as to basis of human rights are divergent which have led to the emergence of different theories: prominent amongst them are as follows-

- **Natural Law Theory**

According to ancient thinkers and philosophers, Human Rights have been derived from the principle of eternal law as revealed in natural law as being closely related both to justice and ethics. Natural law notion was reflected in the writings of Aristotle, Cicero, Gaius and other philosophers.

Later, Christian Fathers extended the authority of natural law by asserting to it a divine origin. National Law theory was practiced by Romans in the formation of body of legal rules for the administration of justice.

Natural law as the basis of human rights has been criticized on a number of grounds.

- **Social Utility Theory**

Another theory which has been advocated as to the basis of human rights is the social utility. Under the social utility theory of human rights, those rights are considered genuine human rights which tend to increase the total happiness of human beings.



Kinds of Human Rights

Human Rights are of two kinds-

- **Civil and political Rights**

Civil rights or liberties are referred to those rights which are related to the protection of the right to life and personal liberty. Such rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thought, conscience and religion and freedom of movement.

Political rights may be referred to those rights which allow a person to participate in the Government of a State.

- **Economic social and Cultural Rights**

Economic Social and cultural rights (so called 'freedom to') are related to the guarantee of minimum necessities of life to human beings. Right to adequate food, clothing, housing and adequate standard of living and freedom from hunger, right to social security, right to physical and mental health and right to physical and mental health and right to education' are included in this category of rights. These rights are included in the International Covenant on Economic, Social and Cultural Rights.

Q.3. Discuss the efforts made at international level to protect human rights.

Ans.

Introduction

Positioning protection of human rights on the level of international law provides for a possibility of a better and stronger control over actions of states. Unfortunately sometimes states' domestic provisions prove to be ineffective or insufficient in this matter. In some occasions, mankind has also experienced that states use their legal system to violate human rights systematically and on a large scale. In a situation like that, domestic law becomes completely useless – the experience of the horrors of the Nazi and the communist regimes has proven this painfully. International law may become a second line of defence for human rights to make sure that states and their domestic legal systems do not lose outer control. Of course, this results in the possible weakening of the concept of state sovereignty, but this does not mean any conceptual problem, as human rights have always served as a possible limit to states' powers.



International Protection of Human Rights

International protection of human rights leads to the development of common values and standards on the level international relations. This is extremely important in a globalised world: while many differences may exist in the practice of states and various cultures, some basic values can be identified regarding human rights. For the protection of these values common standards have been developed, most of which are based on domestic legal solutions. These have gradually been introduced to international practice, for example via various international bodies, which has had its effect after on various domestic practices of states as well. By this, strong international protection of human rights makes a more robust domestic protection of human rights as well.

Advantages and Disadvantages of International Protection

The advantages of international protection of human rights may be summed up around the following factors:

1. Ensuring better control;
2. Development of common values and common standards;
3. Possibility to apply political pressure.

Some of the disadvantages or deficiencies of international protection of human rights also have to be mentioned here. Some of them have political or ideological nature, some of them are the consequence of the nature of the present system of international law. These can be organised around the following main points:

1. Existing political and ideological differences;
2. Questions about states' willingness to develop new or even enforce existing norms;
3. Chances of states to avoid legal binding power made possible by the system of international law.

Q.4. Write a short note on MAGNA CARTA.

Ans. The Magna Carta, or "Great Charter," In 1215, after King John of England violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, which enumerates what later came to be thought of as human rights. Among them was the right of the church to be free from governmental interference, the rights of all free citizens to own and inherit property and to be protected from excessive taxes. It



established the right of widows who owned property to choose not to remarry, and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct.

Widely viewed as one of the most important legal documents in the development of modern democracy, the Magna Carta was a crucial turning point in the struggle to establish freedom.

Petition of Right (1628)

In 1628 the English Parliament sent this statement of civil liberties to King Charles I.

The next recorded milestone in the development of human rights was the Petition of Right, produced in 1628 by the English Parliament and sent to Charles I as a statement of civil liberties. Refusal by Parliament to finance the king's unpopular foreign policy had caused his government to exact forced loans and to quarter troops in subjects' houses as an economy measure. Arbitrary arrest and imprisonment for opposing these policies had produced in Parliament a violent hostility to Charles and to George Villiers, the Duke of Buckingham. The Petition of Right, initiated by Sir Edward Coke, was based upon earlier statutes and charters and asserted four principles: (1) No taxes may be levied without consent of Parliament, (2) No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus), (3) No soldiers may be quartered upon the citizenry, and (4) Martial law may not be used in time of peace.

Very Short Questions Answers

Q.1. What is the purpose of human rights?

Ans. The purposes of securing human rights as such are to provide protection to these rights against the abuses of power committed by the organs of state; to establish institutions for the promotion of living condition of human beings and for the development of their personality; and at the same time, to provide effective remedial measures for obtaining redress in the event those rights are violated. Korel Vasak has aptly remarked that the "human rights, which are essentially individual in character, for they are meant to be enjoyed by individuals, constitute a social phenomenon by virtue of those for whom they are intended.

Q.2. what is Charter of Liberty?



Ans. Charter of Liberty

Charter of Liberty Constitutes steps towards the realization and implementation of Human Rights, The contents of the said historic documents are given below -

- Magna Carta
- Petition of Rights
- Habeas Corpus Act
- Bill of Rights

Q.3. What are the basic aims set-forth in the preamble of the United Nations?

Ans. The preamble of the UN charter has set forth the basic aims of the United Nations. They are:

- To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- To reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- To promote social progress and better standards of life in larger freedom.

Q.4. in what ways the United Nations has been able to promote and protect human rights?

Ans. The United Nations has been able to promote and protect human rights by a number of ways such as-

- Human Rights Consciousness.
- Codification of the Law of Human Rights.
- Monitoring of Human Rights.
- Procedure of Individual's Complaints.
- Compilation of Information on the Violations of Human Rights.
- Examination of Human Rights Situations.



- Coordination of Human Rights Activities.
- By Providing Advisory Services.

Q.5. Explain the Universalization of Human Rights.

Ans. As a matter of fact the Human Rights were universalized after the end of the Second War. President Roosevelt of U.S.A. on 6th January, 1941 declared four fundamental freedoms of human beings. These are-

- Freedom of speech and expression.
- Freedom of every person to worship God in his own way.
- Freedom from want, and
- Freedom from fear.

Besides, the *Prime Minister of Great Britain, Mr. Wincent Churchill* curiously felt the violation of human rights and racial persecution. He declared that racial discrimination and persecution would end at the end of the Second World War. This joint declaration of the two Great Powers of the world had its effect genuinely on the development of the movement for human rights, and as a consequence twenty six nations signed the declaration of United Nations of January 1, 1942 which contained the principle of the Atlantic Charter.

Finally, it was the San Francisco Conference at which the Charter of the United Nations had emerged, incorporating numerous provisions providing for promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex language, or religion.

Q.6. What is the Differences between Fundamental Rights and Human Rights.

Ans. Differences between Fundamental Rights and Human Rights

The points given below explain the difference between fundamental rights and human rights:

1. The elemental rights of the citizens of a country, which are mentioned in the constitution and enforceable under the law is known as fundamental rights. On the other extreme, human rights are the rights that a human being needs to survive with respect and freedom.
2. Fundamental rights include only those rights which are basic to a normal life. On the contrary, human rights include those rights which are basic to a real life and are absolute, i.e. it cannot be taken away.



3. While fundamental rights are country specific, i.e. these rights may vary from country to country, human rights have a global acceptance, meaning that all the human beings enjoy these rights.
4. The fundamental rights rely on the basic principle of the right of freedom. As against, the human rights are based on the right of life with dignity.
5. Fundamental rights are guaranteed under the constitution of the country, whereas the human rights are recognised at international level.
6. Both fundamental and human rights are enforceable in nature, but the former is enforced by the law court, and the latter is enforced by the United Nation Organization.
7. Fundamental rights are derived from the views of a democratic society. Conversely, human rights emerge from the ideas of civilised nations.

Q.7. What is the definition of Human Rights under the protection of Human Rights Act 1993?

Ans. In terms of Section 2 of the Protection of Human Rights Act, 1993 (hereafter referred to as 'the Act'), "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India. "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 .

Q.8. What are the fundamental pillars of democracy?

Ans. Legislature, Executive and Judiciary are considered to be the three Pillars or Columns of our democracy; an additional one being Media. All four together constitute what is called "The Check and Balance" wings to keep the Governance of our Democracy on even keel.

Legislature is supreme in the sense that it is constituted by people's representatives directly elected by the public. It's main function being, to make laws keeping public welfare in mind.



KAMKUS COLLEGE OF LAW

LL.B. VIth SEM

LAW OF HUMAN RIGHTS

CODE (K-6003)

UNIT-II

UNIT-03, 04 & 05

Detailed Questions Answers

Q.1. What is the European Convention on Human Rights? Discuss the various rights and freedoms enshrined in European Convention on Human Rights.

Ans. European Convention on Human Rights

The European Convention on Human Rights (ECHR) protects the human rights of people in countries that belong to the Council of Europe.

All 47 Member States of the Council, including the UK, have signed the Convention. Its full title is the 'Convention for the Protection of Human Rights and Fundamental Freedoms'.

The Council of Europe was founded after the Second World War to protect human rights and the rule of law, and to promote democracy. The Member States' first task was to draw up a treaty to secure basic rights for anyone within their borders, including their own citizens and people of other nationalities.

Originally proposed by Winston Churchill and drafted mainly by British lawyers, the Convention was based on the United Nations' Universal Declaration of Human Rights. It was signed in Rome in 1950 and came into force in 1953.

The decision to draft the European Convention was made after UN General Assembly adopted the universal declaration of human rights and UN transform the declaration into binding treaty obligations. The government of European countries which are like minded and have common heritage of political ideals, freedom, tradition and rule of law, to take first step for collective enforcement of creation of rights stated in Universal Declaration." Human rights system established by convention is not only the oldest but the most advanced and effective of those currently in existence.



It guarantees civil and political rights and proclaims the catalogue of economic and social rights such as right to life, right not to be subjected to torture, inhuman treatment and punishment, freedom of thought, conscience and religion, freedom of expression, freedom from slavery, right to liberty, and freedom from punishment, right to found a family, right to private and family life.

The convention established two institutions- “to ensure the observance of engagement undertaken by the high contracting parties. The convention articles 32 and 54 provide the supervisory function relating to enforcement of its rights guaranteed on committee of Ministers of Council of Europe. The organs of convention also play important role in facilitating implementation of convention.

The additional protocols expanded the catalogue of rights. These protocols deal with interchangeable of institutions engrafted on convention. The first protocols deals with adding of right of education, right to property and undertaking government for the election and other electoral function.

Rights and Freedoms provide under the Convention

The Convention guarantees specific rights and freedoms and prohibits unfair and harmful practices. The Convention secures:

- **Article 1 – obligation to respect human rights**

The state has the responsibility to respect every individual’s human rights, as set out in the Convention itself.

- **Article 2 – right to life**

We all have the right to life, and not be killed by another person. The state must protect people’s lives by enforcing the law, protecting those in danger, and safeguard against accidental deaths.

- **Article 3 – prohibition of torture and cruel, inhuman and degrading treatment**

Nobody, under any circumstances, can torture or abuse anyone else. We should never be treated in ways that cause us serious physical or mental suffering.

- **Article 4 – prohibition of slavery and forced labour**



Nobody should ever be made a slave or forced to work against their will.

There are minor exceptions to this article, for example in some cases it is legal to require someone to work in if they're in prison or the military services.

- **Article 5 – right to liberty and security**

We can only be detained in certain circumstances, for example if we've been convicted by a court, or if we're considered to be a danger to ourselves.

- **Article 6 – right to a fair trial**

We have the right to a fair and public trial, within a reasonable amount of time, by an independent and unbiased judge. If charged with an offence we should be assumed innocent until proven guilty.

- **Article 7 – no punishment without law**

All crimes should be clearly defined by the law. We can only be found guilty of a criminal offence if there was a law against it at the time the act was committed. Once found guilty of a crime we cannot later be given a heavier sentence.

- **Article 8 – right to respect privacy and family life**

This right exists to protect four things: our family life, our home, our private life, and our correspondence. We have the right to live with our family and our loved ones. Respect for the home guards against intrusion into where we live, or to protect us being forced from where we live without good reason. Respect for private life protects our personal freedoms, including respect for our sexuality, the right not to be placed under unlawful surveillance, or for us not to have personal information spread about us against our will. Respect for correspondence allows for us to communicate with others freely and in full privacy.

- **Article 9 – freedom of thought, conscience and religion**

We all have the right to hold religious and other beliefs. We also have the right to change these beliefs when we choose. We should be free to worship and express our beliefs both in public and private spaces.

- **Article 10 – freedom of expression**



We have the right for us to hold our own opinions, to express our views and ideas, and to share information with others. This article can protect our right to express views that some may find unpopular or offensive.

- **Article 11 – freedom of assembly and association**

We have the right to join with others to protect our common interests, to form trade unions political parties. Importantly this article also exists to protect our right to hold meetings, and to assemble in groups to peacefully protest.

- **Article 12 – right to marry**

We have the right marry who we want to, and to start a family.

- **Article 13 – right to an effective remedy**

If our rights are violated then we must be able to challenge this through legal means. The state must make arrangement for this, and there may be compensation for any damage caused to us.

- **Article 14 – prohibition of discrimination**

Our rights should never be denied to us due to any form of discrimination, whether due to our ‘sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status’.

- **Article 15 – derogation in time of emergency**

A state can choose to ignore some specific rights in the ECHR at a time of war or other emergency threatening the life of the nation, but any removal of rights should be limited to those absolutely required by the situation. A state must always make sure these measures are consistent with its obligations under International Law.

- **Article 16 – restriction on political activity of non-nationals**

A state can restrict the political activity of non-nationals, but this does not apply to the nationals of EU member states when in an EU country.

- **Article 17 – prohibition of abuse of rights**

Nothing in the ECHR allows for any state, group or individual to destroy the rights and freedoms that the convention protects.

- **Article 18 – limitation on use of restriction of rights**



The restrictions allowed by the convention should not be applied for any other purpose than those explained in the convention itself.

- The right to protection of property (Protocol 1, Article 1)
- The right to education (Protocol 1, Article 2)
- The right to participate in free elections (Protocol 1, Article 3)
- The abolition of the death penalty (Protocol 13)

The European Court of Human Rights

The European Court of Human Rights applies and protects the rights and guarantees set out in the European Convention on Human Rights.

Q.2. Explain the American Conventions on Human Rights, 1969.

Ans. American Conventions on Human Rights

The American Convention on Human Rights, also known as the Pact of San José, is an international human rights instrument. It was adopted by many countries in the Western Hemisphere in San Jose, Costa Rica, on **22 November 1969**. It came into force after the eleventh instrument of ratification (that of Grenada) was deposited on 18 July 1978. The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States (OAS). The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the principal bodies that are responsible for the observance of the provisions laid down in the convention. The American Convention on Human Rights is also known as the Pact of San Jose.

The Convention affirms the intention of State parties to consolidate “within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man” and focuses mainly on civil and political human rights. The Convention builds on principles that have been recognized in the Charter of the Organization of American States (OAS), the OAS’ American Declaration of the Rights and Duties of Man and the United Nations’ Universal Declaration of Human Rights.

There are two optional protocols to the Convention:



- Protocol of San Salvador: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; and
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

The Convention also offers signatories a chance to sign on to an additional protocol to accept the jurisdiction of the Inter-American Court of Human Rights.

The American Convention on Human Rights is an international human rights instrument aimed at establishing a system of personal liberty and social justice based on respect for the essential rights of man. The convention emphasizes on respecting the recognized rights and freedoms guaranteed to all persons. It further provides that every individual must be given the full freedom to exercise their rights and freedoms without any discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. It generally lays down the standards on human rights that must be observed in all the states of America.

As a general obligation, the States Parties to the Convention undertake to respect the rights and freedoms recognized in the Convention and “to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”

More specifically, every person has:

- The right to “**juridical personality**.” In other words, “every person has the right to recognition as a person before the law.”
- **The right to life.** This right is to be protected, “in general, from the moment of conception.” With respect to the death penalty, “it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime.” In addition, “the application of such punishment shall not be extended to crimes to which it does not presently apply” and “shall not be reestablished in states that have abolished it.” Furthermore, “in no case shall capital punishment be inflicted for political offenses or related common crimes.”



- **The right to humane treatment.** The Convention states that “no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.” In addition, “punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.”
- **Freedom from slavery.**
- **The right to personal liberty.** The Convention requires that “no one shall be subject to arbitrary arrest or imprisonment,” and that “anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him” and that “any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings.”
- **The right to a fair trial.** The Convention states that “every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law” and also affirms “the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel.”
- **Freedom of Conscience and Religion.**
- **Freedom of Thought and Expression.** “This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.” Furthermore, this right “may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies.” In addition, “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”



- **The right of assembly.**
- **The freedom of association.**
- **Rights of the family.** The Convention requires that “no marriage shall be entered into without the free and full consent of the intending spouses.” As well the States parties must “take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution.”
- **Right to a name.** “Every person has the right to a given name and to the surnames of his parents or that of one of them.”
- **Right to nationality.** The Convention states that “no one shall be arbitrarily deprived of his nationality or of the right to change it.”
- **Right to property.**
- **Freedom of movement and residence.** This includes the right of every person to “leave any country freely, including his own.”
- **Right to participate in government.** The Convention states that every citizen has the right to “take part in the conduct of public affairs, directly or through freely chosen representatives”, to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters” and “ to have access, under general conditions of equality, to the public service of his country.”
- **Right to equal protection.** The Convention states that “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.”
- **Right to judicial protection.** The Convention states that “Everyone has the right to simple and prompt recourse ... to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention.”



As well, under the heading “Progressive Development”, the Convention requires the “States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States.”

The Convention allows a State party to derogate from some of its obligations under certain circumstances including war, public danger or other emergency that threatens the independence or security of the State party. Such measures can only be in place to the extent and for the period of time strictly required by the exigencies of the situation and provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin. The Convention also notes that “the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.”

The Convention also describes the composition and functioning of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Q.3. Explain the features and role of National Human Right Commission in protecting human rights.

Or

Q.3. Write a short note on National Human Right Commission.

Ans. In the progression of India, formation of the National Human Rights is major step. The National Human Rights Commission is an autonomous public body founded on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory base by the Protection of Human Rights Act, 1993 (TPHRA).

It is well recognized that Human Rights are essential for entire development of an individual. Human rights are the rights of the individuals, are recognized by the society and are to be compulsory by the state. Thus, these rights must have a social respect and must be enforceable by the state government. Human rights are intrinsic in human nature and they are completely



essential for living as a human being. Human rights are the foundation of human life, self-respect and worth. Human rights can be elaborated as the condition by which man can archive self-freedom and can make the fullest development of him. Human Rights create specific conditions to help an individual to develop his persona. To live the life of dignity of the personality, to express his thoughts freely, to get the freedom to follow any religious dogmas, to make any business and for the financial and educational development as well as the political participation, human rights are more indispensable for human being.

Features of the National Human Rights Commission

National Human Rights Commission was established under Section 3 of the 1993 Act to shield human rights. The term 'human rights' is described in Section 2(d) of the 1993 Act, which reads as follows:

“Human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.”

- It is independent commission. It has been created by an Act of Parliament.
- National Human Rights Commission is dedicated to provide independent opinions on issues within the parlance of the Constitution or in law for the time being enforced for the protection of human rights. The Commission takes an independent stand.
- National Human Rights Commission has the powers of a civil court.
- It has authority to grant interim relief.
- National Human Rights Commission has authority to recommend payment of compensation or damages.
- Large number of complaints received every year reflects the credibility of the Commission and the trust reposed in it by the citizens.
- National Human Rights Commission has wide mandate.
- National Human Rights Commission has exclusive mechanism with which it also monitors implementation of its various recommendations.



The NHRC is the national human rights institution, accountable for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants".

Major purpose of the National Human Rights Commission is through the petition of a person, to examine the violation of human rights or the failures of the state or other to prevent a human rights violation. The Commission can visit state institutions where people are detained such as jails to inspect the conditions of the institutions and ensure they are in compliance with human rights provisions. They can also examine any law or constitutional provisions to ensure that the protections of the law protect human rights. They are to counsel the state on measures to prevent violence and related violations as well as on how to effectively implement provisions of human rights treaties. The commissions may also take on research about human rights, create awareness campaigns through various mediums, and boost the work of NGOs.

Role of National Human Rights Commission

Though the founding of the National Human Rights Commission is great step, yet sometimes it cannot perform its duties effectively. It does not have any mechanism of investigation. It always depends on the staff of the central and state governments. So its investigation sometimes fails to be unbiased.

In majority cases, it asks the concerned Central and State Governments to investigate the cases of the violation of Human Rights. It also approaches the Supreme Court and the High Courts to provide judicial assistance to the victims. Soli J. Sorabjee disparaged it as "India's teasing illusion" due to its incapacity to render any practical relief to the aggrieved party.

On the issue of the violation of Human Rights, India is unnecessarily gripped in controversy. As an independent state, when it takes action against all disintegrating forces, the issue of Human Rights violation is raised. The National Human Rights Commission in India has effectively demonstrated its inclination to act as an effective organisation in the protection of Human Rights. There is a well-planned investigation division within the Commission. The prime duty of this investigation division is to look into complaints received by the Commission. For this purpose the investigation, team makes on the spot investigations. The Act outlines the investigative role of the Commission. Subsection 1(b) of Section 11 provides, "Such police and investigative staff



under and officer not below the rank of a Director General of Police and such other officers and staff as may be essential for the efficient performance of the functions of the Commission.”

The Commission divides the cases in these following categories:

1. Custodial deaths
2. Police excesses (Torture, Illegal detention\ unlawful arrest, false implication)
3. Fake encounters
4. Cases related to Women and Children
5. Atrocities on Dalits\Members of Minority community\ Disabled
6. Bonded labour
7. Armed forces\ para military forces
8. Other important cases

Once the Commission receives a complaint, it seeks comments from the concerned government regarding complaint. After receiving the comments of the concerned authority, a detailed note on the merits of the case is prepared for the consideration of the Commission. After this, directions and recommendations of the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

After completing inquiry, the Commission may take any of the following steps under Section 18 of this Act, namely:

1. Where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons.
2. Approach the Supreme Court or the High Court concerned for such directions, orders or units as that Court may deem necessary.
3. Recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary subject to the provisions of clause
4. Give a copy of the inquiry report to the petitioner or his representative.



5. The Commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority who shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission.
6. The Commission shall publish its inquiry report together with the comments of the concerned government or authority, if any, and the action taken or proposed to be taken by the concerned government or authority on the recommendations of the Commission.

Q.4. Write down the provisions of Constitutional law relating to Human Rights.

Ans. The constitution of India is known as one of the most right-based constitutions in the world. It was drafted around the same time when the Universal Declaration of Human Rights by the United Nations came into force (1948). Indian constitution provides the spirit of human rights in its preamble and the sections on Fundamental rights and Directive Principle of State Policy.

The Indian constitution is based on the theory that guided India's struggle against British colonialism, which was marked by the violation of civil, political, social, economic and cultural rights of the people. Therefore, after independence the framers of the constitution provided some fundamental rights to the citizens which are enshrined in the part III of the constitution. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. These fundamental rights apply to all Indian citizens, irrespective of caste, creed, colour, sex, race or place of birth. They are also enforceable by the courts, subject to certain restrictions. The rights have their origins in many sources including England's Bill of Rights, the United States Bill of Rights and France's declaration of the Rights of Man.

Fundamental Rights

The Fundamental Rights included in the Indian constitution are guaranteed to all Indian citizens. These civil liberties take primacy over any other law of the land. They include individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom of religion, and the right to



constitutional remedies for the protection of civil rights such as habeas corpus. In addition, the Fundamental Rights for Indians are aimed to topple the inequities of past social practices. They abolish the practice of untouchability; prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth; and prohibit traffic in human beings and forced labour. They even protect cultural and educational rights of minorities by ensuring them to preserve their distinctive languages and establish and administer their own education institutions.

There are six fundamental rights enshrined in the Indian Constitution. Right to equality is included in *Articles 14, 15, 16, 17 and 18 of the constitution*. It is the principal foundation of all other rights and liberties. Article 14 describes that all citizens of India shall be equally protected by the laws of the country. Article 15 of the constitution provides that no individual shall be discriminated on the basis of caste, colour, language etc. However, the State may make any special provision for women, children, and for socially or educationally backward class or scheduled castes or scheduled tribes. Article 16 of the constitution defines that the State cannot discriminate against anyone in the matters of employment. However, there are some exceptions, the parliament has the right to enact law/s describing that certain jobs can only be filled by the applicant/s who are domiciled in the area for the post that require knowledge and the language of the locality or the area. The state may also reserve posts for members of educationally and economically backward classes, scheduled castes and tribes for their adequate representation in the jobs. Article 17 abolishes the practice of untouchability. Article 18 of the constitution prohibits state from conferring any titles. This means that the citizen of India cannot accept titles from a foreign state. But Military and academic distinctions can be conferred on the citizens of India and also the awards of Bharat Ratna and Padma Vibhushan cannot be used by the recipient as a title.

Except the right to equality, the Constitution of India provides the right to freedom, given in articles 19, 20, 21 and 22. Freedom of speech and expression (it includes the freedom of press), freedom of assemble peacefully without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of the territory of India, freedom to practice any profession or to carry on any occupation, trade or business are some of the freedoms which are provided to Indian citizen.



However, at the same time these freedoms can be restricted in the interests of public order, morality and the sovereignty and integrity of India. Freedom of speech and expression, generally interpreted to include freedom of the press, can be limited "in the interests of 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"

The constitution also guarantees the right to life and personal liberty under article 20 and 21. Article 20 states that no individual can be awarded punishment which is more than what the law of land prescribes at that time. This legal axiom is based on the principle that any criminal law cannot be made retrospective. Therefore, the essential condition for an act to become a crime or offence is that it should have been an offence legally at the time of committing it. It also provides that no person can be convicted twice for the same offence. Article 21 declares that no citizen can be denied his/her life and liberty except by law. Therefore, an individual's personal liberty can only be disputed if the person has committed a crime. This right does not include the right to die thus suicide or an attempt thereof is an offence.

Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. No person can be arrested without being informed about the grounds for his/her arrest. If arrested the person has the right to defend himself by a lawyer of his choice and also the arrested citizen has to be brought before the nearest court within 24 hours.

In 2002, Article 21 (A) was incorporated by the 86th constitutional amendment act. The primary education has been made a fundamental right under the right to life and personal liberty. It says that "to the children in the age group of six to fourteen years shall be provided free and compulsory education" by the state.

There are provisions that state can impose restrictions on these rights for the interest of independence, sovereignty and integrity of India. Nevertheless, the right to life and personal liberty cannot be suspended. The six freedoms described above are suspended automatically or bear some restrictions imposed on them during the state of emergency.

Article 23 and 24 provides the right against exploitation. It has two provisions, one being, the abolition of trafficking in human beings and Begar (forced labour) and other the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.



Articles 25, 26, 27 and 28 of the constitution cover the right to freedom of religion. The objective of this right is to maintain secular nature of Indian state. Thus all religions are considered equal before the state and no religion shall be given preference over other. Citizens are free to preach, practice and propagate any religion of their choice. It also includes the freedom not to practice a religion and to propagate such views. However, the state can restrict certain practices of religions in the interests of public order, morality and health, say for example the wearing and carrying of Kirpans in the profession of the Sikh religion can be restricted by the state. There are some other provisions like religious communities can set up charitable institutions and no Individual shall be compelled to pay taxes for the promotion of a particular religion. It should also be noted that the institution/s run by the state cannot impart education that is pro-religion

Article 29 and 30 provides special measures to protect the rights of the minorities. While article 29 applies to all the citizens of India, article 30 deals with the rights of minorities. Any religious or linguistic community that has a language and a script of its own has the right to conserve and protect them. State cannot discriminate any citizen against for admission in State or State aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution based on the fact that it is administered by a minority institution, although state can interfere in case of maladministration.

Article 32 of the constitution deals with the right to constitutional remedies it empowers the citizens to seek a court of law in case of any denial of the fundamental rights, by asking the courts to preserve or safeguard the citizen's fundamental rights. It can be done in various ways, for example the courts can issue various kinds of writs. These *writs are habeas corpus, mandamus, prohibition, quo warranto and certiorari*. This right can be suspended by the central government in case of a national or state emergency is declared.

Except this there was a provision for right to property under *Articles 19 and 31*. *Article 19* guaranteed to all citizens the right to acquire, hold and dispose of property. Article 31 provided that "no person shall be deprived of his property save by authority of law. The 44th constitutional



amendment act of 1978 deleted the right to property from the list of fundamental rights. A new article (Article 300 A) was introduced which says that 'no person shall be deprived of his property save by authority of law'. Therefore, if a legislature makes a law that deprives a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, but a constitutional right.

Rights simply mean the freedom which is necessary for the individual good and at the same time for the good of the community. The fundamental rights guaranteed under the Constitution of India have been incorporated into the Fundamental Law of the Land and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.

Directive Principles of State Policy

Part IV of the constitution (Article 36-51) contains the Directive Principles of State Policy. Finalized by the Sapru Committee, these Directives are in nature of directions to the legislative and executive wings of the government to be observed while formulating laws and policies. Most of them aim at the establishment of economic and social democracy which is pledged for in the preamble.

Articles 36 and 37 define the term state and lay down that the provisions in Part IV shall not be enforceable by courts. Article 39 of the constitution requires the state to direct its policy towards securing adequate means of livelihood for all citizens, the citizens, men and women equally, have the right to an adequate means of livelihood, the ownership and control of the material resources of the community are so distributed as best to sub serve the common good, the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. In addition to this, Article 39A added by the 42nd Amendment. It wants the state to ensure equal justice and free legal aid to poor. Organization of village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government is suggested in Article 40. Article 41, 42, and 43 suggest the right to work, to education and to public assistance in certain cases, provision for just and humane conditions of work and maternity relief, living wage, etc., (for workers), and



the participation of workers in management of industries. Article 44 deals with the concept of Uniform civil code for the citizen, means that all religions should be governed by one uniform law. Article 45 and 46 suggest for free and compulsory education for children, and promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections of the society. Article 47 expects the state to raise the level of nutrition and the standard of living and to improve public health. While Article 48 deals with the organization of agriculture and animal husbandry, Article 48A suggests for the protection and improvement of environment and safeguarding of forests and wild life. Article 49 concerns with the protection of monuments and places and objects of national importance and Article 50 expects the separation of judiciary from executive at last **Article 51** of the Directive Principle deals with the concept of promotion of international peace and security.

The State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster respect for international law and treaty obligations in the dealings of organized people with one another; and encourage settlement of international disputes by arbitration. Many of the Directive Principles are influenced by Gandhian philosophy.

Q.5. What is the aim of the Directive Principles of State Policy? What is the relation between Fundamental Rights and Directive Principles of State Policy?

Ans. Part IV, Articles 36-51 of the Indian constitution constitutes the Directive Principles of State Policy which contain the broad directives or guidelines to be followed by the State while establishing policies and laws. The legislative and executive powers of the state are to be exercised under the purview of the Directive Principles of the Indian Constitution.

The Indian Constitution was written immediately after India obtained freedom, and the contributors to the Constitution were well aware of the ruined state of the Indian economy as well as the fragile state of the nation's unity. Thus they created a set of guidelines under the heading Directive Principles for an inclusive development of the society.

Inspired by the Constitution of Ireland, the Directive Principles contain the very basic philosophy of the Constitution of India, and that is the overall development of the nation through guidelines related to social justice, economic welfare, foreign policy, and legal and administrative matters.



The Directive Principles are codified versions of democratic socialist order as conceived by Nehru with an admixture of Gandhian thought.

However, the Directive Principles cannot be enforced in a court of law and the State cannot be sued for non-compliance of the same. This indeed makes the Directive Principles a very interesting and enchanting part of the Constitution because while it does stand for the ideals of the nation, these ideals have not been made mandatory.

In a nutshell, the Directive Principles consist of the following aims:

- The State should strive to promote the welfare of the people.
- Maintain social order through social, economic and political justice.
- The State should strive towards removing economic inequality.
- Removal of inequality in status and opportunities.
- To secure adequate means of livelihood for the citizens.
- Equal work opportunity for both men and women.
- Prevent concentration of wealth in specific pockets through uniform distribution of the material resources amongst all the strata of the society.
- Prevention of child abuse and exploitation of workers.
- Protection of children against moral and material abandonment.
- Free legal advice for equal opportunities to avail of justice by the economically weaker section.
- Organisation of Village Panchayats which will work as an autonomous body working towards giving justice.
- Assistance to the needy including the unemployed, sick, disabled and old people.
- Ensure proper working conditions and a living wage.
- Promotion of cottage industries in rural areas.
- The state should endeavour towards a uniform civil code for all the citizens of India.
- Free and compulsory education for children below the age of 14 years.
- Economic and educational upliftment of the SC and ST and other weaker sections of the society.
- Prohibition of alcoholic drinks, recreational drugs, and cow slaughter.



- Preservation of the environment by safeguarding the forests and the wild life.
- Protection of monuments, places and objects of historic and artistic interest and national importance against destruction and damage.
- Promotion and maintenance of international peace and security, just and honourable relations between nations, respect for international law and treaty obligations, as well as settlement of international disputes by arbitration.

Relation between Fundamental Rights and Directive Principles of State Policy

The Fundamental Rights and the Directive Principles of State Policy enshrined in Parts III and IV of the Constitution of India are designed to be supplementary and complementary to each other, but their relationship with one another has been a subject of controversy at times.

Both the Fundamental Rights and Directive Principles of State Policy aim at the establishment of a true democracy, with the Fundamental Rights focusing on political democracy by emphasizing on individual welfare and the Directive Principles of State Policy focusing on socio-economic democracy by emphasizing on general welfare.

Both the Fundamental Rights and the Directive Principles of State Policy are concerned with State actions. While the Directive Principles of State Policy are positive directives that have to be kept in mind while framing laws, the Fundamental Rights place limitations on the State to prevent the arbitrary use of State power.

The Fundamental Rights, being justifiable in nature stand legally superior to the non-justifiable Directive Principles of State Policy. Thus, the Fundamental Rights stand at a higher position than the Directive Principles of State Policy.

With the 42nd Amendment Act of 1976 adding the word 'Socialist' to the Preamble, general welfare had to be given more importance, and this could only be achieved by giving the Directive Principles of State Policy predominance over the Fundamental Rights.

The 42nd Amendment Act established the supremacy of Parliament and curtailed the powers of Judiciary. The fundamental rights, including those of life and liberty, granted to citizens were now capable of being taken away by a small majority. Hence, it was important to provide adequate safeguards against the occurrence of such an event in the future and to ensure that the



people had an effective voice in determining the form of government under which they were to live.

Hence, the *44th Amendment Act of 1978* once again reversed the status of the Fundamental Rights and Directive Principles of State Policy by re-establishing the predominance of the Fundamental Rights over the Directive Principles of State Policy.

While the legal superiority of the Fundamental Rights over the Directive Principles is the order of the day, it does not imply that the enforcement of a Fundamental Right, or the implementation of a Directive Principle of State Policy should be at the cost of one another, since both embody the philosophy of the Indian Constitution that aims to realize Political and Socio - Economic Democracy in India.

Q. 6. Discuss the Right to Equality under Part III of Indian Constitution as a facet of Human Rights incorporated in International instruments.

Ans. Right to Equality The right to equality is the faith and creed of our democratic republic; it forms the foundation of socio-economic justice. Article 14 embodies the idea of equality as expressed in the preamble. The succeeding articles 15, 16, 17 and 18 lay down specific application of general rule laid down in article 14 of the Constitution. Article 14 provides: "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India". This provision is like the provisions of articles I and 7 of the Universal Declaration of Human Rights, 1948. Articles 2(2) and 3 of the International Covenant on Economic, Social and Cultural Rights, 1966 also talk about equality among men and women. Articles 3 and 26 of the International Covenant on Civil and Political Rights also mention about the equal rights of men and women and equality before law and equal protection of laws respectively. The reference to the principles of equality and non-discrimination is also found in the Charter of United Nations. Other basic instruments adopted by the United Nations and specialized agencies which expressly provide for equality and the prevention of discrimination are, International Covenant on the Elimination of All Forms of Racial Discrimination; the International Covenant on the Suppression and Punishment of the Crime of Apartheid; the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Of ILO; the Convention against Discrimination in Education of UNESCO. The Equal Remuneration



Convention 1951 (No. 100) of 11 and the Declaration on the Elimination of Discrimination against Women in article 14 of the Constitution the first expression "equality before the law" is somewhat negative concept implying the absence of any special privilege in favor of individuals and the equal subjection of all classes to the ordinary law? The other expression "equal protection of the laws" is more positive concept implying equality of treatment in equal circumstances. However, dominant idea common to both the expressions is that of equal justice. "Equality before the laws" means that among equals the law should be equal and should be equally administered, that like should be treated alike. This can be equated with the *Dicey's concept of "Rule of Law"*. In fact, the quintessence of our Constitution is the "Rule of Law". The executive officers of the State cannot interfere with the human rights of individuals unless they can point to some specific law which authorizes their acts. Rule of Law requires that no person shall be subjected to harsh, uncivilized or discriminatory treatment even when the Object is the securing of the paramount exigencies of law and order. The Supreme Court of India has rightly pointed out what Dicey also remarked: "That the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within defined limits? The rule of law from this point of view means that decision should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizens should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is antithesis of a decision taken in accordance with the rule of law". Rule of law also imposes duty upon the State to protect the human rights of the people and take special measures to prevent and punish brutality by police methodology. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades article 14 like a brooding omnipresence. Article 14 strikes at arbitrariness in State action and ensures fairness in equal treatment. 1201 82 The principle of equality as enshrined in the Constitution is not a mere guideline or recommendation but a strict and fundamental provision which imposes on the judiciary the obligation to find out if the legislative, executive and administrative authorities have respected the equality of all individuals.



If the Court finds that this principle has been violated then to order that such laws, acts, ministerial decisions or administrative regulations involved should not be imposed. However, equal protection of the laws guaranteed by article 14 does not mean that all the laws must be general in character. In certain cases the States are obliged to adopt laws or take administrative measures which differentiate between individuals and they cannot be said to be discriminatory, for example. National tax legislation which must necessarily differentiate between taxpayers according to their capital or income. Thus, article 14 permits reasonable classification but prohibits class legislation. It must always be remembered that the classification must not be arbitrary, artificial or evasive but must be based on some real and substantial distinction having rational relation with the object to be achieved. Applying the general principle of equality, article 15 of the Indian Constitution specifically prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It provides: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing Ghats, Roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This fundamental right is available to all the citizens. The corresponding provision to article 15(1) of the Indian Constitution can be found in article 2 of the Universal Declaration of Human Rights, 1948; article 2(1) of the International Covenant on Civil and Political Rights, 1966 and article 2(2) of the International Covenant on Economic; Social and Cultural Rights, 1966. Once the principle of equality is accepted, it becomes impossible to discriminate against any person or group of



persons. The principle of nondiscrimination is based on equality and dignity. Discrimination can be said to be the denial of the fundamental and universally accepted rights of all human beings to persons or groups of persons who are excluded. It is submitted that the various grounds of discrimination mentioned in various international instruments' are not exhaustive, in the fast changing world; new grounds for 84 discrimination may also appear, for example. I-IIV/AIDS infection. Such new grounds have to be tackled carefully without violating, the principle of equality. Article 15(3) permits the state to make special provision for women (on the ground of sex) and children. This is so because women and children require special treatment on account of their very nature. The Constitution permits positive discrimination in the above two cases. The reason is that women's physical structure and the performance of maternal functions place her at a disadvantaged position. Maternity Benefit Act of 1961 has been enacted to provide maternity benefit to women employees. Clause (4) of article 15 further permits the State to make special provision for the advancement of disadvantaged groups such as "socially and educationally backward classes" of citizens, "Scheduled Castes" or "Scheduled Tribes". In India this provision has been exploited by the politicians from time to time by making reservations in various educational and professional educational institutions. The issue of reservation saw many young students immolating in 1990 when the Government of India implemented the Mandal Commission Report granting 27% of reservation to the other backward classes. The real problem is in identifying the people who deserve the real benefit of this clause under the banner of "socially and educationally backward" classes. Also many castes are identified as such Scheduled Castes and Scheduled Tribes. So the real intended benefit does not reach the real deserving people. Article 16 of the Indian Constitution aims at providing equality of opportunity to all citizens in matters of public employment Article 16 provides: 16. Equality of opportunity in matters of employment:

(1) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment of office under the State.



(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. Article 21(2) of the Universal Declaration of Human Rights, 1948 also says that "everyone has the right to equal access to public services in his country". Under the Indian Constitution, equality of opportunity is assured to the citizens in matters relating to employment or appointment to any office. Article 16(4) permits the State for making any provision for the reservation in appointments or posts in favour of any backward class of citizens which in the opinion of the State are not adequately represented in the services of the State. The issue of reservation has resulted in the conflict between the people and social milieu of 86 India. The politicians have been using reservation as a potent weapon for assuring their votes and paying little respect to the human rights. The Mandal Commission agitation in the year 1990 is a clear example of this. Thus, article 16 embodies the particular application of general rule of equality laid down in article 14 with special reference to appointment and employment under the State. Article 17 of the Constitution abolishes untouchability and forbids its practice in any form. Article 17 provides: Abolition of untouchability-"Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law. Thus, the enforcement of any disability arising out of untouchability has been made an offence punishable in accordance with Law. Article 17 is a very important and significant provision from the point of view of equality before the law. It guarantees social justice and dignity of man, the twin privileges which were denied to a vast section of Indian Society for centuries together. The word



"un touch ability" occurring in article 17 of the Constitution has not been used in literal or grammatical sense but as understood by practice developed historically in India. Article 17 of the Constitution is on the lines of the provision of article 2 of the Universal Declaration of Human Rights. Even article 15(2) of the Constitution helps in the eradication of un touch ability as on the grounds of un touch ability no person can be denied access to shops, public restaurants, hotels and places of entertainment or the use of wells, tanks, bathing ghats, roads and places of public resort which are maintained wholly or partly out of State fund. The Parliament of India, in exercise of the powers conferred by article 35(ii) has enacted the untouchability (Offences) Act, 1955. The basic Object of this enactment is to ban the practice of untouchability in any form. This Act of 1955 was amended in 1976 by the untouchability (Offences) Amendment Act, in order to make the law more stringent for removing untouchability from the Society. This Act has now been renamed as "The Protection of Civil rights Act, 1955." Under the amended Act any discrimination on the ground of untouchability is considered as an offence. It imposes the duty on the public servants to investigate such offences. The expression "civil right" is defined as "any right accruing to a person by reason of the abolition of untouchability by article 17 of the Constitution". The Supreme Court of India has held that the fundamental right under article 17 of the Constitution is available against private individual also and it is the constitutional duty of the State to take necessary steps and ensure that this fundamental right is not violated 24.

Q.7. "Public Interest Litigation has played a pivotal role in upholding Human Rights in India." Discuss in detail with case laws.

Ans.

Public Interest Litigation

The term Public Interest Litigation (PIL) is composed of two words; 'Public Interest' and 'Litigation'.

The words 'Public Interest' mean "an expression which indicates something in which the general public or the community at large has some pecuniary interest, or some interest by which their legal rights or liabilities are affected." The word 'litigation' on the other hand means "a legal action, including all legal proceedings initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy."



Hence, lexically the expression 'Public Interest Litigation' denotes a legal action initiated in a court of law for the enforcement of public interest where the rights of an individual or a group have been affected.

PIL in India

The concept of Public Interest Litigation first emerged in USA. The American concept of PIL is clarified by a statement made by "The Council for Public Interest Law" an organisation setup by the "Ford Foundation" in USA, "Public Interest Law is the name that has been given to efforts to provide legal representations to previously unrepresented groups and interests. Such groups and interest include the poor, environmentalists, consumers, racial and ethnic minorities, and others." However, PIL in India substantially differs from that in the USA. *Prof: Upendra Baxi* in his published opinion "Social Action Litigation in the Supreme Court of India" has pointed out that the prime focus of American PIL was not so much on state repression or governmental lawlessness as on public participation in governmental decision making. And since the Indian notion of PIL has assumed the character of more of a moral and humane process in providing justice to the victim as in individual or to a group in matters relating to infringement of fundamental rights or denial of civil privileges on the basis of caste, color or creed, Prof. Baxi, therefore, insisted that the Indian phenomenon described as PIL should be termed as "Social Action Litigation."

According to the jurisprudence of **Article 32** of the **Constitution** of India, "*The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.*" Ordinarily, only the aggrieved party has the right to seek redress under **Article 32**.

In Guruvayur Devaswom Managing Commit. And Anr. Vs. C.K. Rajan and Ors, J.T. 2003 (7) S.C. 312 the Supreme Court held,

"The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete



justice to the aforementioned classes of persona. It expanded its wings in course of time. The Courts in pro bono public granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono public and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings... Pro bono publico constituted a significant state in the present day judicial system. They, however, provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. Public interest litigation has come to stay and its necessity cannot be overemphasized. The courts evolved a jurisprudence of compassion. Procedural propriety was to move over giving place to substantive concerns of the deprivation of rights. The rule of *locus standi* was diluted. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice.”

The first reported case of PIL, in 1979, focused on the inhuman conditions of prisons and under trial prisoners. In *Hussainara Khatoon v. State of Bihar (AIR 1979 SC 1360)* the PIL was filed by an advocate on the basis of the news item published in the Indian Express, highlighting the plight of thousands of under trial prisoners languishing in various jails in Bihar. These proceeding led to the release of more than 40, 000 undertrial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases.

In 1981, the case of *Anil Yadav v. State of Bihar (AIR 1982 SC 1008)* exposed the brutalities of the Police. Newspaper reports revealed that about 33 suspected criminals were blinded by the police in Bihar, by putting acid into their eyes. Through interim orders, the Supreme Court directed the State Government to bring the blinded men to Delhi for medical treatment. It also ordered speedy prosecution of the guilty policemen. The court also read right to free legal aid as a fundamental right of every accused. Anil Yadav signalled the growth of social activism and investigative litigation.



In *Citizen for Democracy v. State of Assam (1995) 3SCC 743*, the Supreme Court declared that handcuffs and other fetters shall not be forced upon a prisoner while lodged in jail or while in transport or transit from one jail to another or to the court or back.

Filing a PIL is not as cumbersome as any other legal case and there have been instances when even letters and telegrams addressed to the court have been taken up as PILs and heard by the court.

Aspects of PIL

1) Remedial in nature: Remedial nature of PIL departs from the traditional locus standi requirements. It indirectly incorporated the principles enshrined in the Part IV of the Constitution of India into Part III of the Constitution. By riding the aspirations of part IV into part III of the Constitution, the Indian Judiciary had changed the procedural nature of the Indian law into a dynamic welfare one. *Bandhu Mukti Morcha v. Union of India*, *Unnikrishnan v. State of A.P.*, etc were the obvious examples of this change in nature of judiciary.

2) Representative Standing: Representative standing can be seen as a creative expansion of the well-accepted standing exception which allows a third party to file a habeas corpus petition on the ground that the injured party cannot approach the court himself. And in this regard the Indian concept of PIL is much broader in relation to the American concept. PIL is a modified form of class action.

3) Citizen Standing: The doctrine of citizen standing thus marks a significant expansion of the court's rule, from protector of individual rights to guardian of the rule of law wherever threatened by official lawlessness.

4) Non-Adversarial Litigation: In the words of the SC, in *People's Union for Democratic Rights v. Union of India (AIR 1982 S.C. 1473)*

“We wish to point out with all the emphasis at our command that public interest litigation...is a totally different kind of litigation from the ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief”. Non-adversarial litigation has two aspects.”

Important Features of PIL



Through the mechanism of PIL, the courts seek to protect human rights in the following ways:

1) By creating a new regime of human rights by expanding the meaning of fundamental right to equality, life and personal liberty. In this process, the right to speedy trial, free legal aid, dignity, means and livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, bondage and servitude, exploitation and so on emerge as human rights. These new reconceptualised rights provide legal resources to activate the courts for their enforcement through PIL.

2) By democratization of access of justice This is done by relaxing the traditional rule of *locus standi*. Any public spirited citizen or social action group can approach the court on behalf of the oppressed classes. Courts attention can be drawn even by writing a letter or sending a telegram. This has been called epistolary jurisdiction.

3) By fashioning new kinds of reliefs under the court's writ jurisdiction. For example, the court can award interim compensation to the victims of governmental lawlessness. This stands in sharp contrast to the Anglo-Saxon model of adjudication where interim relief is limited to preserving the status quo pending final decision. The grant of compensation in PIL matters does not preclude the aggrieved person from bringing a civil suit for damages. In PIL cases the court can fashion any relief to the victims.

4) By judicial monitoring of state institutions such as jails, women's protective homes, juvenile homes, mental asylums, and the like. Through judicial invigilation, the court seeks gradual improvement in their management and administration. This has been characterized as creeping jurisdiction in which the court takes over the administration of these institutions for protecting human rights.

5) By devising new techniques of fact-finding. In most of the cases the court has appointed its own socio-legal commissions of inquiry or has deputed its own official for investigation. Sometimes it has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or experts to inquire into human rights violations. This may be called investigative litigation.



Q.8. Discuss the Salient features of International Convent on Social, Economic and Cultural Rights Do these rights reflect in the Indian Constitution? Explain.

Ans. International Convent on Social, Economic and Cultural Rights 1966

Preamble

The Preamble of the covenant of Economic, Social and Cultural Rights, 1966, is almost same as the preamble of the Covenant on Civil and Political Rights. The reason of this similarity is that common source for both the covenants are U.N. Charter provisions and Universal Declaration of Human Rights, 1948 The preamble of the covenant states that, in accordance with UDHR, if conditions are created whereby everyone may enjoy his economic Social and Cultural rights as well as his civil and political rights.

RIGHTS	ICESCR	Constitution of India Art.
Right to equal pay for equal work	Art. 7(a)(i)	39(d)a
The children’s childhood and youth be protected and promoted moral material things, exploitation. They should be developed in healthy manner. They are treated in dignity with freedom. All the opportunities and facilities to provide to them.	Art. 10(3)	Art.39(f)
Right to work, to education and to public assistance in certain cases	Art. 6(1)	Art. 41
Right to just and humane conditions of work and maternity relief Art.7 (b) & 10(2) Art. 42	Art. 7(b)	Art. 42
Right to living wage etc. for workers	Art.7(a)(ii) & (d)	Art. 43



Right to early childhood care and their academic career of children below the age of six years	Art. 13(2)(a)	Art. 45
Right to raised level of nutrition and standard of living and improved public health	Art. 11	Art.47

These are the international covenants and the comparative study of the Constitutional provisions of the Constitution of India. Although women constitute a majority of the World's population, there is still no society in which women enjoy full equality with men. Every woman and girl is entitled to all human rights civil, political, economic, social and cultural on equal terms with men, free from discrimination. Women and girls also enjoy certain human rights specifically linked to their status as women. Convention on the Elimination of All forms of Discrimination against Women (CEDAW) The Preamble of CEDAW states, "discrimination against women violates the principles of equality of rights and respect for human dignity; is an obstacle to the participation of women, of equal terms with men, in the political, social, economic and cultural life of their countries; hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of human"

Q. 9. Universal Declaration of Human Rights addressed to the individual does inalienable rights of individual. Explain

Ans.

Introduction

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly (10 December 1948 at Palais de Chaillot, Paris). The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. . In 1966 the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights; and in 1976, after



the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

History

During the Second World War the allies adopted the Four Freedoms: freedom of speech, freedom of assembly, freedom from fear and freedom from want, as their basic war aims. The United Nations Charter "reaffirmed faith in fundamental human rights, and dignity and worth of the human person" and committed all member states to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

When the atrocities committed by Nazi Germany became apparent after the Second World War, the consensus within the world community was that the United Nations Charter did not sufficiently define the rights it referenced. A universal declaration that specified the rights of individuals was necessary to give effect to the Charter's provisions on human rights. Canadian John Peters Humphrey was called upon by the United Nations Secretary-General to work on the project and became the Declaration's principal drafter. At the time Humphrey was newly appointed as Director of the Division of Human Rights within the United Nations Secretariat. The Commission on Human Rights, a standing body of the United Nations, was constituted to undertake the work of preparing what was initially conceived as an International Bill of Rights. The membership of the Commission was designed to be broadly representative of the global community.

Adoption

The Universal Declaration was adopted by the General Assembly on *10 December 1948* by a vote of 48 in favour, 0 against, with 8 abstentions (all Soviet Bloc states [i.e., Byelorussia, Czechoslovakia, Poland, Ukraine and The USSR], Yugoslavia, South Africa and Saudi Arabia).

The following countries voted in favour of the Declaration: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New



Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Thailand, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela

Human rights set out in the Declaration

The following reproduces the articles of the Declaration which set out the specific human rights that are recognized in the Declaration.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty, and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.



Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each state.

Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15



Everyone has the right to a nationality.

No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association.

Article 21

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.



Everyone has the right of equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26



Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30



Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Significance

The Guinness Book of Records describes the UDHR as the "Most Translated Document" in the world. In the preamble governments commit themselves and their peoples to progressive measures to secure the universal and effective recognition and observance of the human rights set out in the Declaration. Eleanor Roosevelt supported the adoption of the UDHR as a declaration, rather than as a treaty, because she believed that it would have the same kind of influence on global society as the United States Declaration of Independence had within the United States. In this she proved to be correct. Even though not formally legally binding, the Declaration has been adopted in or influenced most national constitutions since 1948. It also serves as the foundation for a growing number of international treaties and national laws and international, regional, national and sub-national institutions protecting and promoting human rights.

Legal effect

While not a treaty itself, the Declaration was explicitly adopted for the purpose of defining the meaning of the words "fundamental freedoms" and "human rights" appearing in the United Nations Charter, which is binding on all member states. For this reason the Universal Declaration is a fundamental constitutive document of the United Nations. Many international lawyers, in addition, believe that the Declaration forms part of customary international law and is a powerful tool in applying diplomatic and moral pressure to governments that violate any of its articles. The 1968 United Nations International Conference on Human Rights advised that it "constitutes an obligation for the members of the international community" to all persons. The declaration has served as the foundation for two binding UN human rights covenants, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights and the principles of the Declaration are elaborated in international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of Discrimination Against Women, the United Nations Convention on the Rights of the Child, the United Nations Convention Against Torture



and many more. The Declaration continues to be widely cited by governments, academics, advocates and constitutional courts and individual human beings who appeal to its principles for the protection of their recognized human rights.

Short Questions Answers

Q.1. Write a note on Inter-American Courts of Human Rights.

Ans. The Inter-American Court of Human Rights is a *part-time*, non-permanent judicial body established by the American Convention on *Human Rights*. The Inter-American Court of Human Rights is one of two bodies established by the Organization of American States to monitor human rights in the Americas.

The Court was created by Article 33b of the American Convention on Human Rights to safeguard the rights enshrined in the Convention. It is based in San Jose, Costa Rica, was established in 1979, and is made up of seven judges who are elected as independent experts for a term of six years who may be re-elected once.

Role of the Court

The Court interprets the articles of the American Convention and other international human rights instruments to give more in-depth guidance about the provisions of the articles and how States might implement them. This is its consultative work.

The Court's contentious function allows it to make decisions, take protective measures and issue sentences on cases of individual violations of human rights, as well as inter-State violations of human rights. However, the Court can only do this in cases where the State concerned has already said it would allow the Court to rule on such cases. Where the State concerned has not accepted the Court's jurisdiction, the case can only be brought before the Inter-American Commission. If the State has not ratified the American Convention, the Commission will apply the American Declaration of the Rights and Duties of Man.

A State may accept the contentious jurisdiction of the Court, which means it agrees the court can rule on such cases, when it ratifies the American Declaration, at a later date, or on an ad hoc



basis for a particular case. The declaration of acceptance may be unconditional, conditional, for a specific case, or for a limited period of time.

Who may file a Complaint?

Only a state party and the Inter-American Commission have the right to submit a case to the Court. Individuals may, however, submit cases to the Inter-American Commission. In cases before the Court, alleged victims are allowed to participate in the proceedings submitting their pleadings, motions and evidence, autonomously, throughout the proceedings. They may also request the adoption of provisional measures.

Judgements

‘If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.’

- **Binding force**- The States Parties to the Convention undertake to comply with the judgement of the Court in any case to which they are parties. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state’.
- **Execution of judgements** -The Convention does not establish any institutional role for the political organs of the Organisation of American States to supervise enforcement of the Court’s rulings. There is no counterpart, for example, to the Committee of Ministers of the Council of Europe. In the American Convention, only one article refers to the enforcement of judgements. According to Article 65, the Court is obliged to submit an Annual Report to each regular session of the General Assembly of the OAS for its consideration. In this report, the Court ‘shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.’

Q.2. Write about the State Human Rights Commission.



Ans. The Protection of Human Rights Act of 1993 provides for the creation of State Human Rights Commission at the state level. A State Human Rights Commission can inquire into violation of human rights related to subjects covered under state list and concurrent list in the seventh schedule of the Indian constitution.

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Composition

Human Rights (Amendment) Act, 2006 consists of three members including a chairperson. The chairperson should be a retired Chief Justice of a High Court.

The other members should be:

1. A serving or retired judge of a High Court or a District Judge in the state with a minimum of seven years' experience as District judge.
2. A person having practical experience or knowledge related to human rights.

The Governor of the state appoints the chairperson and other members on the recommendations of a committee consisting of the Chief Minister as its head, the speaker of the Legislative Assembly, the state home minister and the leader of the opposition in the Legislative Assembly. The chairman and the leader of the opposition of legislative council would also be the members of the committee, in case the state has legislative council.

The tenure of the chairperson and members is five years or until they attain the age of 70 years, whichever is earlier. After the completion of their tenure, they are not eligible for any further employment under the state government or the central government. However, chairman or a member is eligible for another term in the commission subject to the age limit.

Functions of the Commission

According to the protection of Human Rights Act, 1993; below are the functions of State Human Rights Commission:



1. Inquire *suo motu* or on a petition presented to it, by a victim, or any person on his behalf into complaint of violation of human rights or negligence in the prevention of such violation by a public servant.
2. Intervene in any proceeding involving any allegation of violation of human rights before a Court with the approval of such Court.
3. Visit any jail or any other institution under the control of the State Government where persons are detained to study the living conditions of the inmates and make recommendations thereon
4. Review the safeguards provided by or under the constitution of any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
5. Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
6. Undertake and promote research in the field of human rights.
7. Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights.
8. Encourage the efforts of Non-Governmental organizations and institutions working in the field of human rights.
9. Undertake such other functions as it may consider necessary for the promotion of human rights.

Working of the Commission

- The commission is vested with the power to regulate its own procedure.
- It has all the powers of a civil court and its proceedings have a judicial character.
- It may call for information or report from the state government or any other authority subordinate thereto.

It has the power to require any person subject to any privilege which may be claimed under any law for the time being in force, to furnish information on points or matters useful for, or relevant to the subject matter of inquiry. The commission can look into a matter within one year of its occurrence.



Criticism

State Human Rights Commission has limited powers and its functions are just advisory in nature. The commission does not have power to punish the violators of human rights. It cannot even award any relief including monetary relief to the victim. The recommendations of State Human Rights Commission are not binding on the state government or authority, but it should be informed about the action taken on its recommendation within one month.

Conclusion

There is a requirement to increase the powers of the State Human Rights Commission. This could be increased in various ways in delivering justice to the victims. The commission should be empowered to provide interim and immediate relief including monetary relief to the victim. The commission should also be authorized to punish the violators of the human rights, which may act as deterrent to such acts in the future. The interference of state government in the working of commission should be minimum, as it may influence the working of commission.

Q. 3. Write about the National Commission for Women Act 1990.

Ans. The National Commission for Women was constituted in 1992 as a statutory body in pursuance of the National Commission for Women's Act 1990 to safeguard the interests of women.

The Committee on the Status of Women in India (CSWI) recommended nearly two decades ago, the setting up of a National Commission for women to fulfil the surveillance functions to facilitate redress of grievances and to accelerate the socio-economic development of women.

- Successive Committees / Commissions / Plans including the National Perspective Plan for Women (1988-2000) recommended the constitution of an apex body for women.
- During 1990, the central government held consultations with NGOs, social workers and experts, regarding the structure, functions, powers etc. of the Commission proposed to be set up.
- In May 1990, the Bill was introduced in the Lok Sabha.
- In July 1990, the HRD Ministry organized a National Level Conference to elicit suggestions regarding the Bill. In August 1990 the government moved several



amendments and introduced new provisions to vest the commission with the power of a civil court.

- The Bill was passed and received assent of the President on 30th August 1990.

Composition

The commission shall consist of a chairperson, a member secretary, and other five members.

Chairperson: The chairperson should be nominated by the central government.

Five members: The five members are also to be nominated by the central government from amongst the person of ability, integrity, and standing. They should possess an experience in various fields like law or legislation, trade unionism, management of industry potential of women, women's voluntary organization, education, administration, economic development and social good-being.

Member secretary: Member secretary is also nominated by the central government. He/ she should be either an expert in the field of management, organization or an officer who is a member.

It has a wide mandate covering almost all aspects of women's development from investigating and examining the legal safeguards provided for women under the Constitution and other laws affecting women and recommend amendments to meet any lacunae, inadequacies or shortcomings in such laws.

It also looks into the complaints and takes *suo-moto* notice of matters relating to deprivation of women's rights etc. and take up such issues with appropriate authorities. NCW also take up studies and research on issues of relevance to women, participate and advise in the planning process for socio-economic development of women, evaluate the progress made thereof. It also inspect jails, remand homes etc. where women are kept under custody and seek remedial action wherever necessary.

In keeping with the mandate the Commission has initiated various steps to improve the status of women and works for their economic empowerment.

Function of National Commission of Commission for Women

To investigate and examine all matters relating to safeguards for women.

1. Make recommendation for effective implementation of safeguards.



2. Review the existing provision of the Constitution.
3. Call for special studies or investigations into specific problems.

Inquiry and Investigation

The National Commission of Women enjoys the powers of a civil court. It investigates and examines the matters related to the safeguards ensured for feminine society under the Constitution of India. It took complaints suo moto notice of matters related to the non-implementation of laws and non-implementation of laws and non-compliance of policy decisions, guidelines enacted and aimed at mitigating hardships ensuring the welfare and then take up issues arising out of matter with the concerned authorities.

Action Research

NCW members take part in the planning process of socio-economic development of women, propose measures to encourage their representation in all spheres and review their advancement. It also reviews the safeguards provided for women in the Constitution and other laws study their working, recommend amendments to meet any inadequacies or deficiencies, and advocate measures for effective implementation.

Legal Intervention

The Parivarik Mahila Lok Adalat, (PMLA) is an innovative component with its roots in the traditional Nyaya Panchayats. It is created by NCW for the redressal and speedy disposal of cases. It has taken up 7500 cases so far. The essential feature of PMLA is cordial mutual settlement and flexibility in implementation, aiming to empower women in the justice delivery mechanism.

The Commission shall perform all or any of the following functions:

- 1. Investigation and Examination:** Investigate and examine all the matters relating to the safeguards provided for the women under the Constitution and other laws.
- 2. Presentation of Reports:** Table reports to the Central Government, every year and at such other times as the Commission may deem fit, reports upon the Working of those safeguards.



3. **Recommendations:** Make in such reports and recommendations, for the effective accomplishment of those safeguards for enhancing the conditions of the women by the Union or any State.
4. **Review:** every now and then, the current provisions of the Constitution and other laws distressing the women and prescribe alterations and suggest curative legislative measures meet any break, inadequacies and incapacity in such legislation.
5. **Cases of Violation:** Take up cases of infringement of the provisions of the Constitution and of other laws relating to the women with the relevant authorities.
6. **Suo Motu Notice:** It looks into complaints, and takes Suo Motto notice of matters relating to deprivation of women's rights, Non-implementation of the laws and Non-compliance of the policy decisions guaranteeing the welfare for women society.
7. **Special Studies and Investigation:** It conducts special studies or investigation on the concerning issues or circumstance emerging out of segregation and outrages against ladies and recognizes the limitations in order to suggest techniques for their expulsion.
8. **Research:** Undertake the promotional and educational research so as to propose ways of ensuring due representation of the women in all fields and identifies the factors responsible for impeding the support services and technologies for decreasing drudgery and professional health hazards and for escalating their efficiency.
9. **Participation in all spheres particularly in Planning :** take part and advice on the planning process of socio-economic development of women.
10. **Evaluation:** assess the progress of the development of women society under the Union and State.
11. **Inspection:** investigate or cause to be inspected a jail, remand home women's establishment or other places of guardianship where ladies are kept as detainees.



12. Funding: fund litigation, relating issues affecting a large body of women.

13. Reporting: make periodical reports on any issue pertaining to women and in particular various difficulties under which women toil.

Q.4. Explain the powers and functions of National Human Rights Commission.

Ans. The NHRC has the following powers and functions:

1. To investigate complaints regarding the violation of human rights either suo moto or after receiving a petition.
2. To investigate the failure of duties on the part of any public official in preventing the violation of human rights.
3. To intervene in any judicial proceedings involving any allegation of violation of human rights.
4. To visit any jail or any other institution under the control of the State Government to see the living conditions of the inmates and to make recommendations thereon.
5. To review the safeguards provided under the constitution or any law for the protection of the human rights and to recommend appropriate remedial measures.
6. To study treaties and other international instruments on human rights and to make recommendations for their effective implementation.
7. To undertake and promote research in the field of human rights.
8. To encourage the efforts of the non-governmental organisations working in the field of human rights.
9. To spread human rights literacy among various sections of society and to promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other means.



10. To review all facts related to the activities of the terrorists which obstruct the way of the protection of human rights and to make recommendations for their effective implementation.

While making an inquiry into the complaints submitted to it, the commission enjoys the powers of a civil court. It can recommend to both the central and state governments to take appropriate steps to prevent the violation of Human Rights. It submits its annual report to the President of India who causes it to be laid before each House of Parliament.

It usually sends a copy of the inquiry report to the petitioner and also to the concerned government. The government may be asked to inform it about the action taken or proposed to be taken on the concerned complaints.

Q.5. When can a person directly approach Supreme Court or High Court in case of violation of fundamental rights under Indian Constitution?

Ans. Article 32(2) of the Constitution provides that the Supreme Court shall have the power to issue directives or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the fundamental rights. Article 226(1) of the Constitution confers similar power on the High Courts to issue directions or orders or writs for the enforcement of any of the fundamental rights and for any other purpose. The judiciary acts as the final interpreter, protector, guardian and guarantor of the fundamental rights of every citizen. The Supreme Court has laid down the need for just, fair, reasonable procedure and adequate safeguards against the encroachment by the State on personal liberty of citizens, free legal aid to the poor and speedy trial in several decided cases. The role of judiciary has widened with the corresponding shift in the attitude of modern science of law from the analytical to functional. The court stands between the individuals and the State. It protects the human rights of the individual from any unjustified interference. For the existing judicial process Public Interest Litigation is a new approach. The traditional rule of locus standi has been liberalized by the Supreme Court while invoking Article 32 of the Constitution. Writ of Habeas Corpus may be filed by a person other than the victim. However, the petitioner shall not be a complete stranger. Even the court has relaxed the traditional rule of locus standi which allowed exclusively the aggrieved person who had suffered a specific injury. The Supreme Court has even taken



cognizance of letters from individuals complaining of the infraction of fundamental rights and has treated such letters as writ petitions. Bandhua Mukti Morcha Justice Bhagawati has said that when a member of the public acting bonafide moves the court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief may move the court even by just writing a letter.

Q.6. Write a brief note on the National Human Rights Institutions.

Ans. National Human Rights Institutions (NHRIs) that comply with the principles relating to the status of national institutions, commonly known as the Paris Principles, are playing a crucial role in promoting and monitoring the effective implementation of international human rights standards at the national level, a role which is increasingly recognized by the international community.

National human rights institutions are independent bodies established to stand up for those in need of protection and to hold governments to account for their human rights obligations. They also help shape laws, policies and attitudes that create stronger, fairer societies.

NHRIs are established by law or in the constitution, to promote and protect human rights in their respective countries. However, they operate and function independently from government.

Strong and effective NHRIs help bridge the "protection gap" between the rights of individuals and the responsibilities of the State by:

- Monitoring the human rights situation in the country and the actions of the State
- Providing advice to the State so that it can meet its international and domestic human rights commitments
- Receiving, investigating and resolving complaints of human rights violations
- Undertaking human rights education programs for all sections of the community
- Engaging with the international human rights community to raise pressing issues and advocate for recommendations that can be made to the State.

Several national and state human rights institutions have been created with the aim of protecting human rights and investigating human rights violations.

Affected persons are urged to identify the relevant national and/or state human rights institutions



and contact them with detailed information on the eviction threat or the forced eviction, and the violations of human rights of different sections of the population. Where state institutions do not exist or are not function inadequately, the national human rights institutions could be approached.

These include:

1. National Human Rights Commission
2. National Commission for Women
3. National Commission for Protection of Child Rights
4. National Commission for Minorities
5. National Commission for Backward Classes
6. National Commission for Scheduled Castes
7. National Commission for Scheduled Tribes

Very Short Questions Answers

Q.1. Name the regional agencies established for the promotion and protection of human rights.

Ans. The regional agencies established for the promotion and protection of human rights are-

1. European Convention on Human Rights.
2. The American Convention on Human Rights.
3. The African Charter on Human Rights and people's Rights.
4. Arab commission on Human Rights.

Q.2. what is Inter-American Commission on Human Rights?

Ans. Inter-American Commission is a *quasi-judicial, quasi-political body* established by the OAS Charter and the American Convention on Human Rights. It is based in Washington DC, USA. Commission was established in 1959 by fifth meeting of consultation of ministers of foreign affairs. The OAS council complied with the mandate in 1960 by adopting statute of commission and electing 7 commission members. The commission performs variety of function life consultative, promotional activities. It also play different role in many situation. The



commission sponsors conferences, pamphlets, and human documents and also plays a great role in mediating, protecting human rights in civil war situation, armed conflicts.

Q.3. How did the European Convention come about?

Ans. The Council of Europe was founded after the Second World War to protect human rights and the rule of law, and to promote democracy. The Member States' first task was to draw up a treaty to secure basic rights for anyone within their borders, including their own citizens and people of other nationalities. Originally proposed by Winston Churchill and drafted mainly by British lawyers, the Convention was based on the United Nations' Universal Declaration of Human Rights. It was signed in Rome in 1950 and came into force in 1953.

Q.4. Write measures for protecting Child rights.

Ans. The Government has taken several legislative and policy measures to protect child rights in the country. It is already implementing several laws, policies and programmes for protection of child rights in the country. Some of the key legislative and policy measures are:-Enactment of Commissions for Protection of Child Rights Act, 2005 for setting up of National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR)

- The Juvenile Justice (Care and Protection of Children) Act of 2000 amended in 2006 and 2011 and Juvenile Justice (Care and Protection of Children) Bill 2014.
- The Prohibition of Child Marriage Act, 2006
- The Protection of Children from Sexual Offences Act, 2012
- National Policy for Children, 2013
- National Early Childhood Care and Education (ECCE) Policy, 2013
- The Right of Children to Free and Compulsory Education (RTE) Act, 2009.
 - Child Labour (Prohibition & Regulation) Amendment Bill, 2012.

The following Schemes are being implemented-

1. Integrated Child Protection Scheme (ICPS) in 2009.



2. Indira Gandhi Matritva Sahyog Yojana (IGMSY), 2010.
3. Rajiv Gandhi Scheme for Empowerment of Adolescent Girls (Sabla), 2010.
4. Restructured Integrated Child Development Scheme (ICDS), 2012.
5. Rajiv Gandhi National Creche Scheme
6. Ujjawala
7. Child line and Track Child.
8. Multi-sectoral programme to address Maternal and Child under nutrition
9. Beti Bachao, Beti Padhao.
10. Rashtriya Bal Swasthya Karyakaram (RBSK) launched in 2013.

Q.5. How does National Human Right Commission constitute?

Or

Q.5. Who are the members of National Human Rights Commission?

Ans. The NHRC consists of:

- A Chairperson
 - One Member who is, or has been, a Judge of the Supreme Court of India
 - One Member who is, or has been, the Chief Justice of a High Court
 - Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights
 - In addition, the Chairpersons of four National Commissions of serve as ex officio members-
1. Minorities
 2. SC
 3. ST
 4. Women

Q.6. Give the objects of Protection of Human Rights Act, 1993.

Ans. The main objective of protection of Human Rights Act 1993 is protecting human beings from violations. Without Human rights there would be either no if or a meaning less life. The rights relating to life, liberty equality and dignity of the individual as guaranteed by the



constitution are also included in the category of “Human Rights”. Human Rights are the rights and freedoms of all human beings. The purpose of securing human rights as such is to provide protection to these rights against the abuse of power committed by the organs of state to establish institution for the promotion of living condition beings and for the development of their personality and at the same time to provide effective remedial measures for obtaining redress in the event of those rights are violated. The Act provides for establishment of National Human Rights Commission, State Human right Commission and Human Rights Courts which seeks to prevent and punish any gross violation of human rights.

Q.7. What is meant by P.I.L.?

Ans. Public Interest Litigation, in Indian law, means litigation for the protection of public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public Interest Litigation is the power given to the public by courts through judicial activism.

Q.8. Write briefly about Fair Trial as a Human Rights.

Ans. Fair trials are the only way to prevent miscarriages of justice and are an essential part of a just society. Every person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But it's not just about protecting suspects and defendants. It also makes societies safer and stronger. Without fair trials, victims can have no confidence that justice will be done. Without fair trials, trust in government and the rule of law collapses.

The right to a fair trial is not new; it has long been recognised by the international community as a basic human right. Despite this, it's a right that is being abused in countries across the globe with devastating human and social consequences.

Despite the importance of fair trials being recognised by the international community, this basic human right is being abused day-in-day-out in countries across the globe. We're working to put an end to these abuses, towards realising our vision of a world where every person's right to a fair trial is respected.



What is new is the scale and nature of the challenge: the number of people directly affected by criminal justice is growing with new offences created every day and increasing numbers being jailed. Countries are developing swifter ways of imposing punishments, often without a trial; the global "war on terror" and flawed political talk of "rebalancing" criminal justice systems to make us safer has had a corrosive effect; dictators and authoritarian regimes are finding new ways of using criminal justice as a tool of oppression; and human rights face new threats from increasing cross-border cooperation to fight crime.

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