

Introduction:

The United Nations High Commissioner for Refugees (UNHCR) is a subsidiary organ of the UN General Assembly, which created it in 1949. It began operating in 1951, and its headquarters are in Geneva. The agency currently has a national and international staff of more than 7,190 working in 123 countries. The High Commissioner is currently Mr. Antonio Guterres, who took up the position on 15 June 2005 and was re elected in April 2010. The High Commissioner is elected by the UN General Assembly to a five-year term, on nomination by the UN Secretary-General (Art. 13 of UNHCR Statute). Each year, the High Commissioner reports to the General Assembly, which usually adopts a resolution in support of UNHCR.

Purposes of UNHCR can ensure the protection of refugees by:

1. Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto;
2. promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;
3. assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
4. promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States;
5. endeavouring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;
6. obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them;
7. keeping in close touch with the governments and inter-governmental organizations concerned;
8. establishing contact in such manner as [it] may think best with private organizations dealing with refugee questions;
9. facilitating the coordination of the efforts of private organizations concerned with the welfare of refugees. (Art. 8 of UNHCR Statute)

29. Write a note on NGO's role in protecting human rights.

Introduction:

The term non-governmental or non-profit is normally used to cover the range of organisations which go to make up civil society. Such organisations are characterised, in general, by having as the purpose of their existence something other than financial profit. However, this leaves a huge multitude of reasons for existence and a wide variety of enterprises and activities. NGOs range from small pressure groups on, for example, specific environmental concerns or specific human rights violations, through educational charities, women's refuges, cultural associations, religious organisations, legal foundations, humanitarian assistance programmes – and the list could continue – all the way to the huge international organisations with hundreds. In this section, we look briefly at the significant role that such organisations have had, and continue to have, in the protection of human rights throughout the world. At nearly every level of the different attempts to preserve the dignity of individual citizens when this is threatened by the power of the state, NGOs play a crucial role in:

- fighting individual violations of human rights either directly or by supporting particular 'test cases' through relevant courts
- offering direct assistance to those whose rights have been violated
- lobbying for changes to national, regional or international law
- helping to develop the substance of those laws
- promoting knowledge of, and respect for, human rights among the population.

The contribution of NGOs is important not only in terms of the results that are achieved, and therefore for the optimism that people may feel about the defence of human rights in the world, but also because NGOs are, in a very direct sense, tools that are available to be used by individuals and groups throughout the world. They are managed and co-ordinated – as many organisations are – by private individuals, but they also draw a large part of their strength from other members of the community offering voluntary support to their cause. This fact gives them great significance for those individuals who would like to contribute to the improvement of human rights in the world.

30. Write a note on rights of disabled person.

1. The constitution ensures Indian residents, together with persons living with disabilities with the right of expression, religion, belief, justice, worship, equal alternative and standing, in addition to liberty of thought.

2. The Indian constitution under Article 15(1) frowns at the discrimination of citizens (including persons living with disabilities) on the basis of place of birth, sex, race, caste, and faith.
3. Article 15(2) in the same vein frowns on the practice of subjecting the disabled to any type of restrictions or legal responsibility when accessing public restaurants, shops, places of public entertainment, hotels or when using tanks, Wells, and roads.
4. The constitution guarantees persons living with disabilities the right to employment in any workplace without discrimination
5. Article 17 clearly states that no Indian (together with the disabled) shall be handled as untouchable.
6. Article 21 guarantees the right to liberty and lifetime of the disabled
7. Article 23 prohibits the practice of trafficking persons living with disabilities or forceful employment.
8. Article 24 clearly states that no business or factory should make use of persons living with disabilities under the age of 14 years. The Act also prohibits the employment of disabled youngsters in a hazardous situation.
9. Article 25 clearly gives the disabled the right to faith. Persons living with disabilities can choose the place to worship.
10. The constitution also ensures that persons living with disabilities are not compelled to pay taxes in order to maintain any religious group.
11. The Indian constitution guarantees the right to decide on a language, culture or script
12. Persons living with disabilities have the right to approach the Supreme Court to problem a breach of his/her right under Article 32.
13. Persons living with disabilities have the right to vote and be voted for upon attainment of 18 years.

31. Discuss the implementation procedure of the rights provided under the covenant on Civil & political rights 1966.

Introduction:

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966.

It came into force on 23 March 1976. The treaty commits its parties to respect the civil and political rights of individuals including, freedom of religion, right to life, freedom of assembly, electoral rights and rights to due process and a fair trial.

The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

Implementation procedure:

The implementation of the ICCPR is overseen by the United Nations Human Rights Committee, which reviews reports of parties on how effectively fundamental rights are being implemented. The parties to the ICCPR reports within a year after acceding to the Covenant, and then whenever the committee requires.

The Human Rights Committee

The United Nations Human Rights Committee was created par the article 28 of the International Covenant on the Civil and Political Rights, and was put in place in 1976, right after the adoption of the Covenant.

Composed of 18 independent experts, this committee is in charge of the surveillance of the implementation of the dispositions of the covenant by the States.

The committee holds three sessions per year, either in Geneva or in New York, to control the States, which are bound to present periodical reports (every four years) and their efforts in the implementation of the covenant. Besides, as soon as a State enters the Covenant, it has to give the committee an initial report on its national situation.

The committee is competent to receive communications formulated by States on other States, on violations of the dispositions set by the Covenant (article 41). The first facilitative protocol of the Covenant make the committee competent to examine communications coming from privates, related to a violation of the disposition by a State (article 14).

The second facilitative protocol of the Covenant provides the abolition of the death penalty for the States which signed the Covenant.

Finally, the committee can also formulate general observation which will enable the clarity of dispositions and to advise the States on the implementation of the Covenant.

The Economical, Social and Cultural Rights Committee

The Economical, Social and Cultural Rights Committee has not been created by the International Covenant on the Economical, Social and Cultural Rights, but by the Economical and Social Council of the United Nations, in its resolution 1985/17 on May 28th 1985. According to the fourth part of the Covenant, it is the Council that has the ability to control its implementation. But the council, already in charge of many activities, decided in 1985 to create the Committee as a checkpoint of the implementation of the Covenant.

The committee is composed of 18 independent experts and is holding two sessions per year in Geneva. As the Human Rights Council, the States are bound to give their periodical reports (every 5 years) and an initial report every two years following their membership to the Covenant. This report can also formulate their general observations.

32. Discuss the rights and freedom provided under the American convention on human rights.

Introduction:

The American Convention on Human Rights (aka the Pact of San José) is a multilateral treaty that establishes democratic institutions regarding fundamental human rights for countries in the Western Hemisphere. The treaty entered into force on July 18, 1978.

Goal: To establish international regulations outlining the roles of states in protecting human rights.

Part I: State Obligations and Rights Protected

Chapter II: Civil and Political Rights

Article 4: Right to Life

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

In no case shall capital punishment be inflicted for political offenses or related common crimes.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

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

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude

2. No one shall be required to perform forced or compulsory labor.

Article 7. Right to Personal Liberty

Every person has the right to personal liberty and security.

Article 12. Freedom of Conscience and Religion

Everyone has the right to freedom of conscience and of religion

Article 13. Freedom of Thought and Expression

Everyone has the right to freedom of thought and expression.

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized

Article 16. Freedom of Association

Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property.

2. No one shall be deprived of his property except upon payment of just compensation

3. Usury and any other form of exploitation of man by man shall be prohibited by law.

Article 24. Right to Equal Protection

33. With the help of decided case explain the role of courts in protecting human rights in India.

Human rights courts in India

Section 30 of the Protection of Human Rights Act, 1993, says that “Human Rights Courts to provide speedy trial of offenses arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Courts to try the said offenses: Provided that nothing in this Section shall apply if:

1. A Court of Session is already specified as a special court; or
2. A special court is already constituted, For such offenses under any other law for the time being in force.”

Special Public Prosecutor

Under Section 31 of the Protection of Human Rights Act, 1993, the appointment of special prosecutors for the Human Rights Courts is stated. They are to be appointed by the state government. The Special Prosecutor should be an advocate who has been in practice for not less than seven years. His function is to conduct cases in court. Human Rights Courts will have a status of imparting justice and will have a different situation when compared to the National Human rights Commission or the State Human Rights Commission.

Human Rights Courts in Districts

Chapter VI of the Act, which includes Sections 30 and 31, provides the provision relating to the formation of a Human Rights court in every district of the country. This is done for accelerating the speedy trial of offenses arising out of violation of Human Rights. The State government may establish the Human rights Court with the consent and permission of the Chief Justice of the High Court through a notification providing specifications for each district to make the Court of Session by a Human Rights Court. The State government shall perform the task of appointing a public prosecutor or an advocate who

has had the practice of being an advocate for not less than seven years to conduct cases in the human rights Courts. Such a person shall be called a special Public Prosecutor.

Important Cases

In the year 2019, during the hearing of Punjab state Human Rights Commission v. Jatt Ram, NHRC also put forth the judgment that no state compiled the order to specify or set up the HRC. The bench said that the setting of the courts does not consider it essential to appoint any additional judges or infrastructure till the judgment of the court is not executed. The Supreme Court had issued Chief Secretaries to show why chief secretaries need not issue such directions.

Supreme Court

The Supreme Court is the guardian of fundamental rights, and it has a crucial function to protect these rights. India is the signatory of the international conventions on Human Rights; therefore, our constitution is embodied with Human Rights in the form of the fundamental rights in Part III of the Indian Constitution. The concept of the separation of power and division of forces gives the judiciary some form of independence from the other two organs, allowing the judiciary to uphold the rule of law and protection of Human Rights. In India, the court exercises its power of interpretation of part III efficiently to trigger advancement in human rights protection.

Important Cases

Fundamental Rights case

Kesavananda Bharati v. The State of Kerala – A 13 judge Constitutional Bench was formulated to evaluate the intricacies of Golaknath's case. The Supreme Court overruled its decisions in the Golaknath case. To do away with the latter case, and held that there were several limitations on the power of amendment of the parliament and Article 368 does not have the power to destroy the basic structure of the constitution.

The conclusion derived is that if the drafters had intended to make any part of the constitution unamendable, it would have been expressly mentioned in article 368.

This case overruled the Golaknath case. The court said the parliament act would be considered to be violative of ultra-vires if it tries to rewrite the whole constitution because it has the power under article 368 of the body. This view of the Supreme Court protects human rights on the entire front.

Habeas corpus case

ADM Jabalpur v. Shivakant Shukla Case, In this case, four out of five judges held that all the fundamental rights would remain suspended during an emergency. Justice H.R. Khanna gave a dissenting opinion and the best judgment, which paved the way for the rule, which states that the state cannot deprive anyone of the right to life and personal liberty without due process of law.

Maintenance case

Shah Bano case – Supreme Court granted maintenance to Shah Bano and protected the rights of Muslim women beyond the personal laws. Despite this, the Muslim community considered that this specific verdict of the court encroaches on and defines the Muslim Sharia Law; therefore, parliament ordained All India Muslim Personal Law Board, 1973.

34.Explain the salient features of the human rights (protection) act 1993.

Refer Q.No. 06

35.Explain the writs available under the constitution of India for the protection of human rights.

Introduction:

Writs are written orders issued by the Supreme Court of India to provide constitutional remedies to protect the fundamental rights of citizens from a violation.

Facts about writs in India

- Article 32 also empowers Parliament to authorize any other court to issue these writs
- Before 1950, only the High Courts of Calcutta, Bombay, and Madras had the power to issue the writs

- Article 226 empowers all the high courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as 'Prerogative writs'

What is a Writ Petition?

A writ petition is essentially a court petition for extraordinary review, asking a court to intervene in a lower court's decision. Under the Indian legal system, jurisdiction to issue 'prerogative writs' is given to the Supreme Court and the High Courts of Judicature of all Indian states. Parts of the law relating to writs are outlined in the Constitution of India.

Type of Writs

The Constitution empowers the Supreme Court and High Courts to issue orders or writs.

The types of writs are:

- Habeas Corpus
- Certiorari
- Prohibition
- Mandamus
- Quo Warranto

Habeas Corpus

Habeas Corpus is a writ that is enforced to protect the fundamental right to liberty of an individual against unlawful detention. This writ commands a public official to deliver a detained person in front of the court and provide valid reasons for the detention. However, this writ cannot be issued in case the proceeding is for contempt of a legislature or a court.

Certiorari

The writ of certiorari is issued to a lower court directing that the transfer of a case for review, usually to overrule the judgment of the lower court. The Supreme Court issues the writ of Certiorari in case the decision passed by the lower court is challenged by the party. It is issued in case the higher court finds it a matter of over jurisdiction or lack of jurisdiction.

Prohibition

Prohibition is a writ issued by a higher court to a lower court to enforce inactivity in the jurisdiction. It happens only in case the higher court is of the discretion that the case falls outside the jurisdiction of the lower court. Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.

Mandamus

The writ of mandamus is issued to a subordinate court, an officer of the government, or a corporation or other institution commanding the performance of certain acts or duties.

Unlike Habeas Corpus, Mandamus cannot be issued against a private individual.

The writ of mandamus can be used to order the completion of a task or in other cases, it may require an activity to be ceased.

Quo-Warranto

Quo warranto is issued against a person who claims or usurps a public office. Through this writ, the court inquires 'by what authority' the person supports his or her claim.

Through this writ, the court enquires into the legality of a claim of a person to a public office. This writ prevents the illegal assumption of a public office by an individual.

36.What are the sources of international human rights law.

Refer Q.No. 20.

37.Write a note on different kinds of human rights.

Types of Human Rights

As guaranteed by the Universal Declaration of Human Rights (UDHR), Human Rights can be classified as:

Social or Civil Human Rights

Each one of us is entitled to:

- a. Right to life, liberty and security
- b. Right to freedom from slavery and servitude
- c. Right to freedom from torture or cruel, inhuman or degrading treatment or punishment

- d. Right to freedom from arbitrary interference with privacy, family, home or correspondence
- e. Right to marry and have family and right to property

Political Human Right

To take part in political processes, each one of us is entitled to:

- a. Right to nationality
- b. Right to equality before the law and equal protection of law
- c. Right to judicial remedies, fair trial and freedom from arbitrary arrest, detention or exile
- d. Right to freedom of thought, expression, belief, faith, conscience and religion
- e. Right to freedom of peaceful assembly and association
- f. Right to take part in government affairs and equal access to public service
- g. Right to equal suffrage
- h. Right to freedom of movement and right of asylum etc.

Economic Human Rights

Each one of us is entitled to certain economic human rights:

- a. Right to social security
- b. Right to work and the right to equal pay for equal work
- c. Right to form trade unions
- d. Right to rest and leisure
- e. Right to food, health and an adequate standard of living

Cultural Human Rights

To protect different cultures, customs, and traditions, we are entitled to:

- a. Right to participate in the cultural life of the community
- b. Right to enjoy the art and to share in the scientific advancement and its benefits
- c. Right to the protection of the moral and material interests resulting from any scientific, literary and artistic production of which the individual is the author
- d. Right to a social and international order in which the human rights as provided in the Universal Declaration can be fully realized

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