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Authors

**Prof. Prakash K. Mokal
Adv. Ishwarlal Agarwal**

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**"PUBLIC INTRNATIONAL LAW
&
HUMAN RIGHTS"**

By –

Prof. Prakash K. Mokal

B.A. (Special English); LL.M.

University of Mumbai.

(Former Principal, Government Law College, Mumbai)

Adv. Ishwarlal Agarwal

Advocate, Supreme Court of India.

M.PHIL. (LAW), LL.M. (Criminal Law), LL.M. (Constitutional Law); M.Sc. (Forensic Psy.), M.B.A. (H.R.),
M.A. (M.C.J.), M.A. (PUB. ADMN.), M.A. (S'LOGY), M.A. (GANDH. THGT.), M.A. (P.&R.), M.L.I.Sc.

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“Nihil Nisi Bonum” [“Only The Best Will Do”]

Salient Features of the Book

- 1) *This Book is based on the University recommended Books.*
 - 2) *Full coverage is given to the syllabus prescribed by the University.*
 - 3) *All the Questions-Answers-Notes and Objective Questions-Answers on “P.I.L. & Human Rights” are arranged Chapter-wise, and every Chapter is discussed in a “Question-Answer” form in the sequel order of the Articles of respective Conventions. This will certainly enable the students to understand and remember them easily.*
 - 4) *Various Articles/Sections of the Conventions/legislative enactments are explained with their ingredients, and **leading Case Law** is cited, wherever necessary, in order to make the concept very clear.*
 - 5) *All Questions have been properly framed to cover proper Answers.*
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 - 7) *In all, **46 Full Questions** in the Notes + **131 Full Questions** from University Exam. Q. Papers with Answers [Total 176]; **15 Short Notes** in this Book, + **135** from University Exam. Question Papers with Answers [Total 150]; and **Objective Questions/Two sentence answers with Solutions 55 + 225** in this Book, + **440** from University Exam. Question Papers [Total 720]; and **78 Situation based Problems [Total 78]** along with Solutions from University Exam. Question Papers on “**Human Rights & Public International Law**” have been given in this Book.*
- Therefore, this Book is complete and exhaustive from the examination point of view.*
- 8) *This Book obviates the need to refer to the **Bare Acts**, as almost all Sections/Articles of Conventions have been discussed therein.*
 - 9) *University Examination Question papers with solutions from April, 2005 to May, 2019 are given at the end of this Book.*
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Revised Syllabus

"PUBLIC INTERNATIONAL LAW AND HUMAN RIGHTS "

This Paper is divided into three Parts :

1. **Public International Law** [30 marks].
2. **Human Rights in International Law**.....[40 marks].
3. **Human Rights**.....[30 marks].

(I) Public International Law :

1. Introduction.
2. Custom.
3. Treaties.
4. State Territories.
5. Recognition of state and Government.
6. Law and Practice of Treaties.
7. The Law of the Sea.

(II) Human Rights in International Law :

Theoretical Foundation, Human Rights and International Law.

Basic Principles –

- a) Sovereign equality of states, non-intervention, non-use of force, peaceful settlement of disputes;
- b) Individuals as subjects of International Law;
- c) Treatment of aliens.

Historical Development of Human Rights –

- a) Human Rights in Indian tradition and western tradition;
- b) U.N. and Human Rights.
- c) Covenant on political and civil rights (1948);
- d) Covenant on economic, social, and cultural rights;
- e) ILO and other Conventions and Protocols dealing with Human Rights;
- f) International Human Rights Commission;
- g) Mandates to states;
- h) Right to Development.

Role to Regional Organisations –

- a) European Convention on Human Rights;
- b) American Convention on Human Rights.

Protection Agencies and Mechanism –

- a) International Commission of Human Rights;
- b) Amnesty International;
- c) NGOs in India only;
- d) European Commission on Human Rights;
- e) U.N. Declaration of Human Rights;
- f) International Labour Organisation (ILO);
- g) UNESCO;
- h) UNISEF.

Impact and Implementation of International Human Rights norms in India –

- a) Human Rights norms reflected in fundamental rights in the Constitution of India;
- b) Directive Principles, Legislative and Administrative implementation of International Human Rights;
- c) Implementation of Human Rights norms through judicial process.

Enforcement of Human Rights –

- a) Role of Courts : the Supreme Court, the High Courts, and the other Courts;
- b) Statutory Commission : Human Rights, Women's, Minority, and Backward Class.

(III) Human Rights :

National view on the basis of the Indian Constitution and Judicial expositions.

- 1. Human Rights and Child Abuse.
- 2. Human Rights and Women.
- 3. Human Rights and Workers.
- 4. Human Rights and Accused, Convicts and Prisoners.
- 5. Human Rights and Environment.

Recommended Readings :

- 1) S.K. Avasthi & R.P. Kothari – Law Relating to Human Rights.
- 2) S. K. Verma – Public International Law.
- 3) Peter J. Van Krieken – The Exclusion of Clauses.
- 4) Human Rights and Global Diversity.
- 5) Nirmal B.C. – The Right to Self-Determination in International Law.
- 6) P.R. Gandhi – International Human Rights Documents.

Public International Law

Syllabus

- 1) Introduction.
- 2) Custom.
- 3) Treaties.
- 4) State Territories.
- 5) Recognition of states and Government.
- 6) Law and Practice of Treaties.
- 7) The Law of the Sea.

[N.B. : Wherever, the word 'state' occurs, it denotes the 'nation' or 'country'].

1) Introduction:

Q. 1 : Discuss Austin's view and Oppenheim's view on International law. Also discuss a criticism of their view.

Answer :

International law was formerly known as "law of nations", because, according to many Jurists, international law regulates the relations of states with one another. The international law was defined as the Rules governing the relations between the states. Jeremy Bentham used the word "International Law" for the first time in the year 1789.

According to Oppenheim's, Law is the body of rules of human conduct within a community. These rules of human conduct are enforced by external power by common consent of the community.

Thus, Oppenheim's definition of law has three elements –

- a) There must be a community.
- b) There must be a body of rules of human conduct within that community.
- c) These rules of human conduct must be enforced by the external power with the common consent of the community.

OPPENHEIM then defined what is international law –

Definition by OPPENHEIM :

"The law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilised states in their intercourse with each other".

Analysis of definition by OPPENHEIM's:

According to Oppenheim, –

- 1) International Law is a set of rules that governs of the relation between the states.
- 2) The rules of international law regulate the inter-state activities like uses of sea, outer space, Antarctica, etc.
- 3) International law is a body of Customary and Treaty rules.
- 4) These rules are considered legally binding upon civilised states.

- 5) The rules bind the activities of civilised states with each other.
- 6) These rules are basically derived from customs and treaties.

This definition of Oppenheim's was criticized on the following grounds –

- 1) International organization and institutes are also regarded as subjects of international law and are given rights and duties under international law. The definition takes into account only relations between states and does not take into account international organization and institutes.
- 2) After the establishment of United Nation's Organization, individuals are given certain rights and duties. The definition does not includes individuals also.
- 3) The activities of multinational corporate are not included in the definition.
- 4) The definition takes into account rules derived from customs and treaties, but does not take into account rules of international law derived from the general principles of law recognized by the civilized nations.
- 5) According to this definition, international law is static, but in reality international law is dynamic and always changing.

The above definition of Oppenheim was outdated and does not stand the development made by the nations. Hence, Oppenheim in 1992, defined International Law as under –

“International law is the body of rules which are legally binding on states in their intercourse with each other. These rules are primarily those which govern the relation of states, but states are not the only subject of international law. International organization and to some extent, also individuals may be subjects of right conferred and duties imposed by international law”.

Thus, the criticism of Oppenheim's older definition of international law was covered in the new definition which was wider than the earlier definition.

There is a conflict of opinion whether international law, is a law. Some Jurists say that international law is not a true law. These are only the rules of conduct having only Moral force and no sanction behind them. While, some Jurists say that international law is a true law just like the ordinary laws of state which are binding upon the individuals within that states. Whether international law is a law or not, depends upon the definition of law.

Austin's view:

According to Austin, law is the command of a superior Sovereign, enacted by a determinant Sovereign authority, breach of which makes the offender liable for punishment.

Analysis of definition:

According to Austin –

- 1) Law should be enacted by a Sovereign legislature authority. If the law is not enacted by Sovereign legislative authority, it will be called as an improper law.
- 2) The law should have a sanction behind it, it means, if the law is not obeyed by a person (i.e. offender), the Sovereign authority should impose the punishment for any such disobedience/breach of law.
- 3) If the above two elements are not present in a law then it shall not be a proper law, it shall be merely the laws of morality.

According to Austin, international law cannot be called as a true law, because of the following reasons –

- a) International law is not enacted by a Sovereign legislative authority.

- b) It does not have the sanction of any Sovereign legislative authority.
- c) There is no agency for the enforcement of international law.

Thus, according to Austin, international law is just a positive international morality. International law is, therefore, not a legal system.

Criticism:

Austin's definition of international law has been criticized on following grounds –

- 1) Austin has taken into account only those laws which are enacted by Sovereign legislative authority and has ignored the customary and unwritten laws.
- 2) The communities were ruled by customs and usage, which had the force of law, even before the enacted law governed the conduct of the communities.
- 3) In addition to written law, customary laws are in the existence everywhere.
- 4) According to Austin, laws are observed because of fear behind it, but in many communities laws were observed because of inner morality, habit of mind and community practices.
- 5) Austin's definition has failed to explain why states considers the international law to be binding upon them.

Thus, it can be said that the definition given by Austin is not adequate. The conclusion of Austin, that the international law is not a law and it is just a positive morality, is not correct.

These are the views of Oppenheim and Austin on international law and criticism of their views.

Q. 2: "International law is a true law, but a weak Law" – Discuss.

Answer :

INTERNATIONAL LAW IS A TRUE LAW:

International law is a true law because –

World is an international community, the conduct of the members of a community are regulated by the rules. These rules can be in the form of custom and treaties. The members of community have the consent for these rules which regulate their conduct.

The international community consists of various states. These states accept that the rules of international law binding upon them.

Following laws are observed by the states without the instance of breach of any of them –

- a) Rules of immunity to diplomatic agent.
- b) The laws of warfare.

The rules of international law are generally observed by the states. If these laws were breached, there would be a chaos in the world community.

International law has been incorporated as a part of law of land in their Constitution by many states.

Case Law:

"PAQUETE HABANA" CASE :

Justice Orey of the United States Supreme Court in the above case, stated that, "International law is the part of our law, it must be administered by the courts of justice of appropriate jurisdiction".

The term international law has been used in –

- a) Charter of United Nations.
- b) Statute of International Court of Justice.
- c) In the Constitution of various international organizations.

Today, International legislation is in existence due to various multinational treaties and conventions. If the international law is violated by any state it can be enforced both by the aggrieved state and by the United Nations Organization. Today, there is International Court of Justice, the decision of international court of justice is binding upon the parties to a case. If the party fails to perform according to the judgment given by International Court of Justice, then the Security Council of United Nations has powers to enforce the decision of International Court of Justice.

Thus, we can conclude that “international law is a true law”.

INTERNATIONAL LAW IS A WEAK LAW :

Although, the international law is a true law, but it is a weak law. The rules of international law are not as effective as the rules of municipal laws. International law is generally observed for the purpose of peace for relations and co-operating among the states.

International law is a weak law because of the following grounds –

- 1) Rules of international law exist due to international treaties and customs. They are not as efficient as the state legislative machinery.
- 2) Sometimes, the formulation of treaties and customs gives very wide option to the states which are parties to it
- 3) There is no court which can decide all the legal dispute between all the states. The International Court of Justice although exists, it acts only with the consent of states. Hence, it has no jurisdiction to decide the disputes of all the states.
- 4) There are no effective measures for the enforcement of international law.
- 5) International laws are violated by states, on many occasions, especially during war.
- 6) Some of the units of international community are very strong. Hence, it is not possible to compel the observance of international law by these units.

Because of these reasons, it can be said that the international law is a weak law.

Q. 3 : What do you mean by “basis of law” ? Discuss the Naturalist School and Positivist School on the basis of international law.

Answer :

There is a question, what is the basis of international law. Different Jurists are of different opinion about the basis of international law. This difference of opinion of jurists, has resulted in the formation of different theories.

These theories are –

- 1) Naturalist theory;
- 2) Positivist theory; and
- 3) Eclectic theory.

1) Naturalist Theory:

This theory is based on a law of nature. The jurists of 16th and 17th century regarded international law as the Law of Nature. According to these jurists, international law is based on system of law which emanates

from God or from reasons or from morals. Grotius, Vattel and Pufendorf are the supporters of the Naturalist Theory. According to them, all the laws are derived from God. God's superior law is a divine law. Natural law, therefore, means, the application of divine law. The rule of natural law consists of fundamental and unchangeable principles. These rules show the will and consent of the rules and those who are ruled in the human societies. Thus, according to these jurists international law is also based on natural law and it is a divine law.

Criticism:

The naturalist theory has been criticized by the jurists of 19th centuries. They have criticized it on the following grounds:

- 1) Naturalist theory is very vague;
- 2) It is not clear as to what is law of nature;
- 3) Natural law is given different meaning by different jurists. It is called as a reason, justice and moral;
- 4) If the concept of a natural law if enforced, it will result into confusion;
- 5) This theory is not based on reality and actual practice of states.

In spite of the about criticism, the Law of Nature has helped in the growth of international law. In the initial stages, the international law has developed on the basis of rules that were derived from the Law of Nature. This is the Naturalist Theory behind basis of international law.

2) Positivist Theory:

According to following of positivist theory, only those rules shall be called law, which have been given consent by the states. The free will of the states gives the binding effect to the rules of law. The followers of positivist theory are Bynker Shoek, Mortens and Anzilotti. This theory is based on the reality and actual practice of the states.

According to them, international law is binding, because, the states have given consent to the rule of international law. The consent of the states may be either express or implied. The express consent can be given by conclusion of treaties. In case of established usage or customs, the consent is said to be an implied consent.

Thus, it can be said that the custom and treaties by which the consent of the state is obtained, is the basis of international law. If the state do not give consent to a particular rule of international law, it cannot be regarded as binding upon it

Criticism:

This theory is criticized on following grounds –

- 1) All the rules of international law are not derived from customs and treaties, some of them are also derived from the general principles of law which are recognized by the civilized nations.
 - 2) Even if a state has not consented to a particular rule of international law, it is still binding upon it. Article 36 of the Vienna Convention of the law of treaties states that “a treaty may be binding on the third state also”. As long as the contrary is indicated by them, their consent shall be presumed to have been given to the rule of international law.
 - 3) Even against the will of the states, the states are bound by the general international law.
- Thus, it can be concluded that the positivist theory is not fully correct.

3) Ecclectic theory :

According to this theory, international law is derived both from the Natural Law as well as Positive Law. Both, the naturalist theory, and positivist theory is based on extreme views. Hence, the jurists of followers of Ecclectic Theory had adopted the middle way between the positivist and naturalist theory. The follower of Ecclectic Theory is mainly Vattel. According to him, Law exists both, at the natural level, as well as, positive level. Most of the rules of international law are based on the consent of states, while few of them are also based on law of nature.

Thus, it can be concluded that international law is based on both, the law of nature, and the consent of states. This is a basis of international law.

Q. 4 : Write a short note on :**Functions of International Law.****Answer :**

Rules of international law created with the consent of the state. There is no sovereign authority present for the enforcement of these rules of international law. The will of the states determines the performance of functions of international law.

The important functions of international law are –

- 1) To maintain international peace and security;
- 2) To realise friendly relations among states;
- 3) To achieve international co-operation in solving international problems of an economic, social, cultural and humanitarian character;
- 4) To settle international disputes by peaceful means;
- 5) To refrain from the threat or use of force by state against the territorial integrity or political independence of any State;
- 6) To provide the right of self-determination to the people; and,
- 7) To provide fundamental freedoms and human rights.

But, due to weakness of international law, it has failed to perform its function adequately. If the aspirations of all the states, which have emerged on a large number are not fulfilled, then the functions of international law will remain inadequate.

Q. 5 : State various sources of international law and discuss:

- a) Customs, and
- b) Writings of jurists as sources of international law.

OR

What are the important sources of international law ? Discuss briefly.

OR

How far are the general principles of law recognized by civilized nations, and judicial proceedings considered as sources of public international law ?

OR

Elucidate the sources of modern international law with reference of Article 38 of the statute of the International Court of Justice.

OR

Discuss custom as a source of international law. What are the other sources ?

Answer :

Sources of international law means, the method by which the rules of international law are created. In the absence of any codified rule, it is difficult to say what the sources of international law are.

According to Article 28 of the statutes of International Court of Justice, the courts should apply the following law while determining the case before them, in order of preference –

- 1) International Conventions whether it is general or particular, which shows the rules which are recognized by the contesting states are to be applied first.
- 2) In absence of any international conventions, international customs which show the general practice accepted as law, must be applied.
- 3) In absence of international customs and international conventions, the general principles of law recognized by civilized nations can be applied.
- 4) If all the three sources are absent, then judicial decisions and the teachings of those publicists which are very highly qualified, must be applied as a subsidiary means of determination of rules of law governing the relations of states.

Following are the sources of International Law –

- 1) Customs;
- 2) Treaties;
- 3) General principles of law recognized by civilised nations;
- 4) Judicial decisions;
- 5) Writings of jurists;
- 6) Equity;
- 7) Resolutions of the General Assembly.

1) Custom:

Custom is the oldest source of international law. It is the original and most important source of international law. The large part of international law consists of customary rules. Customary rules are the rules which are practiced by most of the nations, since the ancient time. The customary rules are obligatory due to the consent which has been obtained due to the following over a sufficient period of time. Custom is a habit of the people which is binding upon the states. A usage is a general practice which does not have a legal obligation. But, when the habit or usage becomes obligatory on a State due to its practice over a extended period of time, then it is called as a custom. Thus, custom is an important source of law.

2) Treaties:

Treaties are the written agreements concluded between two or more states or between the subjects of international law. The states by concluding the treaties, create the relationship between them. Presently, international treaties are the most important source of international law. It has acquired a dominant place in the international law. Treaty is the express consent given by the parties to it, to follow the rules laid down in it. Since, many customary rules having the implied consent, they have been transformed into treaty rules.

Example :

Customary law of diplomatic relations has been transformed into Vienna Convention on Diplomatic Relations of 1961.

Treaties are of two types, general treaty and particular treaty. When most of the states of the world community are parties to a treaty, it is called a General treaty. It is opened for assessment by other states.

Example :

1. Hague Convention, 1899;
2. Geneva Convention, 1949.

Particular treaties are called bilateral or plurilateral treaties. They are between two, or more than two parties. Particular treaty is binding only upon the parties to it. Thus, treaties are important source of international law.

3) General principles of law recognized by civilized nations:

General principles of law recognized by civilized nations, is another source of international law. The Council of League of Nations appointed the Advisory Committee of the jurists to frame the statute of Permanent Court. The Chairman of the advisory committee moved the proposal that, apart from customs and treaties, the court should apply the rules of international law which are recognized by the civilized nations. The majority of members forwarded the proposals. Hence, under Article 38 (3) of the statute of the Permanent Court of International Justice, general principles of law recognized by civilized nations were inserted. The general principles of law recognized by civilized nations have become the important source of international law. In the absence of any custom and treaty, general principles of law recognized by civilized nations is applied for solving the cases before the International Court of Justice. Hence, general principles of law recognized by the nations, is an important source of international law. Because, they are recognized by almost all the states in their domestic law.

4) Judicial decisions:

Judicial decisions are the indirect sources of international law. It is the subsidiary source of international law, because, the decisions of Court do not create any precedent. There has been no binding force. They are binding only upon the parties to the case. Decisions of International Court of Justice, Awards of International Tribunals, the decisions of Municipal Courts, and decisions of regional Courts are the indirect source of international law.

5) Writings of jurists:

As per the status of International Court of Justice, the teaching of only most highly qualified publicist (i.e. expert in international law) of various nations can be used to determine the rules of law. Thus, writings and teachings of any publicist is not taken into consideration. But, the highly qualified publicist only, which can be of any nation. Highly qualified publicist is a relative term and not the absolute term. The fact that, a publicist or a writer is highly qualified or not, is determined by the tribunals before whom the writings, teachings, placed as an evidence for the determination of rules of law relating to the case before it.

6) Equity :

Equity is regarded as another source of international law. Equity means, fairness, reasonableness and policy which is necessary for the proper application of the rules of law. But, the term equity is not contained in the statute of the International Court of Justice. The reason behind the exclusion of equity in International Court of Justice is that, it may give for much discretionary power to the Court. Generally, equity cannot be applied in a dispute which is presented before the court; Hence, it cannot be regarded as a source of international law. But, equity is very important in those cases where customary rules are not available. In the absence of any established rules, the Court should decide the case on the basis of general notions of justice and equity. The Court should form a new rule based upon the surroundings rules to context of the case.

Case law :**1) *United States v/s. Canada (popularly known as Gulf of Maine Boundary Case)***

The Court referring to equity said that, in international law, the concept such as acquiescence, and estoppels are present due to principle of good faith and equity.

2) In the case of *Rann of Kutch* between India and Pakistan, the tribunals stated that, the equity is a part of international law.

Thus, it can be said that equity is an important source of international law.

7) Resolutions of the General Assembly :

The resolutions of General Assembly are adopted unanimously by the number of states. But, they do not possess any legal character, and as such, do not create any legal obligation on its members. Currently there is difference of opinion about the legal character of the resolution of General Assembly within the western states and Third World countries. Western states are of the opinion that, resolutions of General Assembly are the elements of customary rule. But, Third World countries are of the opinion that, the resolution of General assembly is the will of the international community. They have the capacity to form the customs itself, and therefore, general principles of law. The resolutions of General Assembly provide the base for the progressive development of the law. General Assembly prefers the function of law making, these laws are very important as they have been recognized by the states. At the time of determination of law, the international community must consider these laws made by General Assembly. Thus, it can be said that resolution of General Assembly are an important sources of international law. These are the sources of international law.

Q. 6: Write a short note on :

Custom.

OR

Discuss custom as a source of international Law. What are the other sources of International Law ?

Answer :

Custom is the oldest and the original source of international law. The modern international law is based on custom. A major part of international law consists of customary rules. Customary rules are practiced by many states. Through ages, and as such, they had become a habit. Custom is code of conduct to be followed in a community. It had an accent of the community for the binding nature of custom. The custom has a binding nature as it is followed by states over a sufficient duration of time. Custom is different from usage. Usage does not have a legal obligation, but, custom has a binding effect on states. Custom consists of those habits which are binding upon the states. Thus, when a habit or usage occupies the obligatory nature upon the state, it becomes a custom. The violation of any usage is not illegal, but violation of any customary law, is regarded as illegal act.

How custom is formed ?

When a general practice is followed consistently by the states and acquires a range of legal obligation, it gives rise to customary international law. Customary rules are not formed by itself when a state initiates a practice, it shows that it is bound by that practice, it is deemed that the customary rules as evolved. A customary rule emerges when it can be shown by sufficient evidence that the rule has been accepted by the states and is legally binding upon the other party.

Case Law :

Asylum Case :

The International Court of Justice held that, if a party relies on custom, then such party must prove that the custom has become binding on the other party.

In order to become an international custom, a custom or practice must have the following elements:

- a) Duration;**
- b) Continuity;**
- c) Generality.**

a) Duration:

When a particular usage is practiced for a long duration between the states, it can become a custom. The international custom may be observed for a long duration by the states in their intercourse with each other and must have legal obligation. How much long duration is required for a usage to become a custom, cannot be determined. An immemorable practice is not necessary for a usage to become a custom. A usage can become an international custom even in a short time. It all depends upon the circumstances of the case and the nature of the usage which is involved.

Examples :

- i) Practice relating to continental shelf has become custom within a short period. Sometimes, even after a long period of time, a practice cannot become a custom.
- ii) The diplomatic asylum is practiced by some states over a prolonged period, but it has not become custom.

There is no fix period of time for a usage to transform into a custom. The time period depends upon the acceptability of a custom by the states. If a custom is widely accepted by the states, then passage of a long period of time is not necessary. Thus, duration is an important element for the transformation of the usage or practice into custom.

b) Consistency :

It is an important element of an international custom. A practice must be followed consistently in order to become an international custom. The international custom must be followed uniformly and consistently by the states. The uniformity in following of custom need not be complete, it can also be at substantial uniformity. If there is a substantial inconsistency in the following of a practice, it shall not become a custom. But, a minor inconsistency shall not affect the transformation of a practice into a custom.

Case Law :***Fisheries Case -***

In this case, the Court refused to accept the 10 miles rule, because, the practice was not followed consistently.

The consistency in the following practice can vary according to the subject matter of the rule in dispute. Thus, a practice must be followed consistently in order to become a custom.

c) Generality:

For a usage to become a custom, it should be followed by most members of states of international community. When usage is followed generally by all the states, it becomes a custom. Consent of all the states is not required for the formation of customary rule. It is sufficient, if the rule is followed generally by all the states.

Case Law:***Fisheries Case -***

In this case, the Court said that, the expression "generally accepted" means, a customary rule must be accepted generally by all the states.

If any usage is practiced only by few states, then such usage cannot become a custom.

Thus, for a usage to become a custom, it is essential that it is accepted generally by all the states.

Custom or customary rules are of three types, they are -

- 1) General customary rules;
- 2) Particular customary rule; and
- 3) Exceptional customary rules.

1) General customary rules:

These are those customary rules which are binding on all the states. General customary rules are not

applicable to the state who has refused to recognize them.

Examples: 1) Rules of the treaties; 2) Rules of diplomatic intercourse; and 3) Law of sea are the general customary rules.

2) Particular customary rules:

They are also known as local customary rules. When a practice is developed between the two states, they give rise to particular customary rules. These rules are binding only upon those states.

3) Exceptional customary rules:

A customary rules which are binding on the whole on a regional community of state in relation to one or few subjects of international law, are called as exceptional customary rules. These rules are an exception for the benefit of one or more states.

This is known as custom or customary rules of international law.

Q. 7: Trace the historical development of international law.

OR

Briefly discuss the present day status of international law.

Answer :

International law is the term which was used by Bentham for the first time. Previously, international law was known as law of nations. The international law has been systematically developed in the last century only. Nevertheless, international law has its origin since the ancient time.

Let us see how the international law has developed :

1) International law in ancient period :

In ancient times, the relation of states were governed by rules which are based on law of nature. Rules regarding the war and peace were followed by the Jews, Greeks and Hindus. Greek civilization showed that there can be an international community. Independent states can be members of international community. In this international community, the relation of the Independent states can be governed by certain rules and customs which shall have the consent of the members of international community. Thus, it can be seen that international law was prevalent in ancient times.

2) International law in Middle Ages :

After the break-up of Roman Empire the international law developed in the Europe. To deal with the international relations with the Sovereign states a law was required. These Sovereign states were dealing in trade and commerce. It leads to the evolution of rules relating to sea, customary maritime rules were evolved, because, most of the sovereign states were having their own maritime rules. Internationally, these customary maritime rules were recognized. Law of arbitration was evolved to protect the trade and citizens who were involved in trading. Sending and receiving diplomatic agent, become customary in those times. Thus, international law began to develop in Middle Ages.

3) Development of international law during the period of Grotius i.e. (1583 to 1645):

The international law developed during the lifetime of Grotius, his contribution to international law cannot be forgotten. He was called as a 'father of law of nations'. Grotius introduced the law of reasoning into the law of nations. Grotius considered customary law of nations less important and concentrated more on natural law of nations. He was the supporter of the law of sea. He introduced the rule for the benefit of prisoners of war and opines that the Captor should maintain the prisoners adequately. Concept of justice and unjust war was introduced by him. Work of Grotius is relied as authority by the courts and tribunals while giving decisions.

4) Development of law during 17th and 18th century:

During 17th and 18th century, schools of science and international law emerged. These schools were Naturalist school, Positivist school and Grotius school.

a) Naturalist school:

Those authors who believed that international law is based on law of nature, were the supporters of naturalist school of international law. According to them, rules of natural law was the only source of international law. They were of the view that international law is the part of law of nature. German Jurists Pufendorf is a follower of naturalist school. Naturalist school was criticized on the ground that the term natural is too vague. It has different meanings to different jurists, for example – religion, reason or justice. But, nevertheless, the foundation of law of nation was laid down by naturalist school.

b) Positivist school:

According to the followers of positivist school, the rules of international law derived from customs and international treaties. Law of nation is based on consent of the states. Consent of the states can be given either expressly or by implication. Express consent is given in treaty, while implied is given by following the customary rule. Positivist says that, international law is one to which the states has consented to be bound. If the state does not give consent to be bound, there will be no law for that state.

Bynker Shoek, Moser and George Friedrich, Von Mortens were the followers of positivist school. The positivist school was criticized on the ground that, even if the state does not give consent to allow, still it shall be bound by it.

c) Grotius School:

The followers of Grotius School opined that, the international law derived from both, the positive law, and the law of nature. Wolff and Vattel was the follower of Grotius School. According to Grotius, both, practice of state, and natural law, are the sources of international law.

5) International law in 19th century:

Jurists of 19th century were of the view that international law is based on consent of states, and therefore, importance of law of nature declined in 19th century. The 19th century shows the rapid development of international law due to emergence of number of states, International law extended to other parts of the world. Development of transport and communication, led to the development of international law. In Vienna Congress, many rules of international law were formulated. Due to scientific developments new methods of warfare were introduced. Hence, rules of war were formulated in the form of treaties.

Examples:

- i) Declaration of Paris created rules of naval warfare.
 - ii) Hague Convention formulated rules of warfare and neutrality.
- Such was the development of international law in the 19th century.

6) International law in 20th century :

According to jurists of 20th century, the international law was based upon consent of the states. Rules of international law were derived from customs and treaties. Reason and justice was considered important in the absence of any practice between the states. There are many factors which are responsible for the development of international law in 20th century.

They are as under –

- 1) For the maintenance of world peace organizations, such as, League of Nations and United Nations Organization, were established.
- 2) International Courts were set up firstly, Permanent Court of International Justice and then International Court of Justice. These courts resolved many legal disputes between the states.
- 3) International organizations started handling social, cultural and economic problems of the states
- 4) Conclusion of many treaties has lead to the formation of rules of international law.

5) Ambiguous and uncertain rules of international law have been codified.

6) Apart from states, individuals and international organizations have also become those subjects of international law.

All the above factors have led to the development of international law in 20th century.

Thus, the international law has come a long way and developed substantially in the present century.

Q. 8: Explain relationship between International Law and Municipal Law.

OR

Discuss the relationship between International Law and Municipal Law.

OR

Write a short note on :

International Law and Municipal Law.

Answer :

International law is applicable to the relations between the states and other subjects of international law. The law applicable within the state is known as Municipal law. Municipal law governs the relationship between the citizens of the nation and also the state of the particular nation. The relationship between international law and municipal law is very important. A large part of international law deals with activities of individuals who come under the jurisdiction of municipal courts. Thus, in municipal courts a large part of international law is enforced. The relationship between international law and municipal law must be determined for the harmonious functions of the two systems of law. The international law applied with the Co-operation of municipal law.

Example :

The diplomatic immunity given by the International law is to be recognized by municipal law for the purpose of rendering the international law useful and meaningful. Different jurists have different views about the relationship between international law and municipal law.

The relationship between the rules of International Law and Municipal Law is one of the most controversial nature.

This difference of opinion has led to the emergence of different theories.

These theories are as under –

- 1) Dualistic theory; and
- 2) Monistic theory.

1) Dualistic theory:

In 1899, German scholar Triepel developed the Dualistic theory. According to this theory, international law and municipal are two distinct, separate and self-contained legal systems.

According to Triepel, international law and municipal law are based upon two different systems. International law governs the international relations, and municipal law governs the relations between individuals and states and individual. Hence, it is not the part of internal law, i.e. municipal law of the state. Even if the rules of international law applied within a state, they are applied as a part of internal law i.e. municipal law and not as the international law, because, before application, these international law are developed as internal municipal law. Italian jurist Anzilotti followed Triepel. According to him, international law has altogether different character from municipal law.

The international law and municipal law system deferred on following grounds –

- a) **Difference on the ground of source:**

The source of municipal law are customs followed in the state concerned and the status enacted by the sovereign authority of the state. The source of international law is the custom followed by the state and the law making treaties to which the states are given their consent.

b) Difference on the ground of subjects:

According to Dualistic theory, the subject of both, international law, and municipal law, are different. Municipal law regulates the relation between the individuals and corporate entities. It also governs the relation between the state and individuals. International law so regulates the relation between the states.

c) Difference on the ground of substance of law:

The substance of law of international law system and municipal system is different. Municipal is the law of the sovereign prevailing above the individuals of the state. International law is the law prevailing not above, but between the sovereign states. The norms of international law are created by the subjects of international law i.e. the state, individuals and international organizations. The norms of municipal law are created by the sovereign authority in the state.

d) Difference on the ground of principles:

According to Anzilotti, municipal laws are obeyed, because, they have a legal sanction of the sovereign. But, international law is obeyed, since states bound themselves to follow them.

e) Difference on the ground of dynamics of subject matter:

The two system of law differ also on the point of subject matter. The subject matter of municipal law is static, while that of international law is dynamic i.e. it is always changing.

Thus, the two systems of law are entirely different, but international law is still applied by municipal courts. Rules of international law forms the part of the law of land. In case of conflict between municipal law and international law, municipal law shall prevail over international law.

Criticism of Dualistic theory:

Dualistic theory is criticized on following grounds, –

a) It is not correct to say that international law is not part of municipal law and shall not become the law of land unless it has been specifically adopted by the state, because, fundamental principles of international law are binding upon the states, even against the will of the state.

b) According to Dualistic theory, international law regulates the law relating to states only. But, this is wrong, because, at present certain activities of individuals are regulated by international law. Rules of international law impose punishment for the wrong committed by the individuals.

c) act of a suit serving is not the only principle of the inter-national law, certain rules of international law legally binding upon the states.

This is the Dualistic approach for the relationship between international law and municipal law.

2) Monistic Theory :

Monistic theory was propounded by two German scholars Moser, and Mortem. It was further developed by Austrian Jurist Kelsen. According to Monistic theory, municipal law and international law are the parts of only one legal system. Thus, international law and municipal law are intimately connected with each other. They are the two branches of unified knowledge of law. "According to monist belief, international obligations and municipal rules are facts of the same phenomenon, the two deriving ultimately from one basic norm and belonging to the unitary order comprised by the conception of law". In the ultimate analysis of law we find that individual is at the root of all laws; All laws are made for individuals.

These jurists derive the distinct and autonomous character of international legal system. According to them, the international law made by states themselves, hence, there was hardly any need to incorporate the international rules into municipal legislation. There is only one legal system and that is the domestic legal system. International law cannot be distinguished from the municipal legal system. Monistic jurist, the Firman, is of the view that all the laws are made for the individuals only. Municipal law binds them directly, but international law binds them only through States. Both, municipal law, and international law solve the problems of human beings, hence, they are related to each other.

According to them, –

- 1) There is one whole legal system of which international law and municipal law are just the branches. Hence, neither municipal law, nor the international law, is above the legal system.
- 2) Subject of the both the legal systems are only individuals.
- 3) Both, municipal law, and international law binding upon its subjects against the will of the subject.
- 4) Both, municipal law, and international law are not different, they are part of single concept of law.
- 5) International law is supported even within the sphere of operation of municipal law.

Thus, according to Monistic theory, there is only one system of law.

The two theories that show the relationship of international law and municipal law are in existence since a very long time. Both the theories should be harmonized, because, ultimately, both, the international law, and municipal law, are made for the human beings only.

3. Specific adoption theory :

According to this theory, International Law cannot be directly enforced in the field of State Law unless the Municipal Law permits it or adopts it specifically. In other words, in order that the International Law is to be enforced in the field of Municipal Law, it is necessary to make its specific adoption i.e. the Municipal Law must permit it or adopt it specifically by way of passing appropriate legislation. Examples – Vienna Convention on Diplomatic Relations, Act, 1972, passed by Indian Parliament; Stockholm Declaration, 1972; The Water (Prevention and Control of Pollution) Act, 1974; and other Environmental Legislations.

4. Transformation Theory :

According to the exponents of this theory, the rules of International Law to be applied in the field of Municipal Law, must undergo transformation. This theory is also based on the theory of consent which has already been criticized. There are several law making treaties and principles of International Law which become applicable in the field of Municipal Law without undergoing the process of transformation, For example – the Headquarters' Agreement between the United States of America and United Nations.

5. Delegation Theory :

The critics of Transformation Theory have to put forward a new theory called the Delegation Theory. According to this Theory, the constitutional rules of International Law permit each State to determine as to how International Treaties will become applicable in the field of State Law. The Constitution of each State contains provisions in this connection. Thus, no transformation takes place. This theory is based on presumptions, and therefore, criticized severely.

Q. 9: “States are only and exclusively the subjects of international law”. Critically analyze the statement in the light of recent development.

OR

Discuss the theories regarding subjects of international law.

OR

Is an individual a subject of international law ? Discuss.

OR

“State is not the only subject of public international law”. Discuss.

Answer :

Possession of international personality determines whether an entity is the subject of international law or not. If an entity possesses international personality, it becomes the subject of international law. If the international rights and duties are possessed by an entity, then it shall be deemed to possess international personality. The entity must also be capable of maintaining its rights by making international claims.

According to Oppenheim, the subject of international law possesses international personality and enjoys the rights, duties or powers given by international law. The concept of international personality is a result of international law.

Case Law:

Reparation for injury case, (International Court of Justice Reports, 1949 page 179) –

In this case, it was held that the subject of international law are those who are capable of possessing international rights and duties. They must have capacity to maintain their rights by making international claims. The rules of international law determine which entity possesses the rights, duties and capacity to maintain its rights. An entity need not possess all the rights and duties recognized by international law. It is sufficient if the entity is capable of performing few acts or even a single act, which are provided by rules of international law. Such entity shall be regarded as the subject of international law.

Different jurists have different views about the question as to which entities are the subjects of international law. Due to difference of opinion, the theories regarding the subjects of international law have evolved.

They are –

- 1) Realist theory;
- 2) Fictional theory; and
- 3) Functional theory.

1) Realist Theory:

According to Realist theory, “States alone are the subjects of international law”. According to tradition and concept of international law, state which is a sovereign political entity, is the subjects of international law. Realist theory states that, only the states have the rights and duties under international law. According to realist theory, state which is a legal entity can be distinguished from the human beings. States are the subjects of international law, while human beings are the objects of international law. Thus, the individuals do not have any personality under international law as they do not possess any rights or duties under international law. Even if an individual has a right, it can be claimed only through the states.

Criticism:

Realist theory is criticized on the grounds that –

- 1) Rules of international law give certain rights and duties to entities other than states.
- 2) The view that states are subjects of international law, is not maintainable.
- 3) At present international law is not restricted to any states. It has widened its scope to various international organizations and individuals.

Thus, the Realist Theory propounds that, the states are only the subjects of international law, is not adequate.

2) Fictional Theory:

According to fictional theory, only individuals are the subjects of international law. State has no body or soul. It is not capable of forming its own will. State is an abstract entity which acts only through individuals. All the laws i.e. international law or municipal law are meant for human beings. Municipal law is binding on human being directly, but international law is binding through state. This theory is based upon a fiction, according to it, since state is composed by human beings, the rights and duties of state are ultimately the rights and duties of the individuals. Hence, it can be said that, ultimately, it is the individuals who are the subjects of international law. Since, it is regarded as fiction, this theory is known as fictional theory.

Criticism:

Fiction theory is criticized on the ground that the primary concern of international law is with the rights and duties of the state. Rights of individual, if any, has to be imposed through states only.

According to fictional theory, state is fictional entity while an individual is a real entity.

3) Functional Theory:

According to this theory, both, states, and individuals are the subjects of international law. This theory also recognizes international organization also as a subject of international law. This theory is called functional theory. Because, international personality is granted to those who are capable of executing legal functions under the international law. Most of the rights and duties under international law have been given to states, and therefore, they have unlimited international personality. Hence, states are the primary objects of international law.

Individuals and international organizations have not been given all the rights and duties as given to states, hence, only restricted personality. International organizations have been given certain rights and duties. They perform part of legal functions. They have a local personality under international law which is separate from states, similarly, individuals are also given certain rights and duties under international law. If the individuals fail to perform their duties he is liable for punishment. They can claim the benefits given under such law, hence, individuals are also regarded as international persons.

Thus, it can be concluded that states as one, are not the subjects of the international law. But, due to changing times individuals and international organizations are also reasoned of the subjects of international law.

Q. 10: “International law grants personality to individuals in the form of rights and duties” – Comment.

OR

“In addition to the imposition of duties and responsibilities on individuals, international law also grants personality in the form of rights”. Substantiate the statement with proper illustrations from the development of international law.

Answer :

In the ancient times under international law individuals were regarded as objects of international law. They were not at all considered as subjects of international law. From international viewpoint, individual does not have any legal significance. It was the state responsible to another states under international law for injuries caused to individuals. Individuals were given importance by the character of United Nations. But, the question was whether individuals have any place under international law, the answer to this question was depended upon whether an individual has been given any rights and duties under international law.

Though, the states are considered as the primary subjects of international law, they are not the only subjects of international law. Individuals have been given certain rights and duties under international law, hence, they are also regarded as subjects of international law. There are many rules of international law which are directly concerned with the position and activities of individuals. But, many rules affects an individual indirectly also.

Following are the rights and duties given to individuals under international law, –

1) Rights of Individuals under rules of international law:

By adopting international conventions, many rights have been given to the individuals.

They are as under –

- a) **Human rights:** The Universal Declaration of Human Rights adopted by General Assembly in 1948, gave rights to individuals. But, the states were not legally bound to give effects to the provisions of Universal Declaration of Human Rights.

- b) By adopting the following conventions and protocols the contracting states agree to provide the rights to individuals as stipulated in the conventions and protocols.

The Conventions and Protocols are –

- 1) International Convention on Civil and Political Rights;
- 2) International Convention on Economic, Social and Cultural Rights;
- 3) Optional Protocol to International Court on Civil and Political Rights.

These are adopted in 1966. A child below the age of 18 years were given rights by the International Convention on the Rights of the Child. It was adopted on 20th November, 1989.

Women were even right by adoption of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). It was adopted by a General Assembly on 18/12/1979.

2) Rights to make Petitions:

The individuals have been given the rights to make petition, if their rights are violated. Such petition can be filed before the forum. This right to make petition is available at the instance of the state only. Thus, if the state is not a party to convention, which have given rights to individuals, then the individual cannot file the petition against the state before international forum.

Conventions and Protocols which have given rights to individuals are as follows –

- 1) Optional protocol to the convention on civil and political rights 1966.
- 2) Convention on the elimination of all forms of racial discrimination, 1966.
- 3) Conventions against torture and other cruel inhuman or degrading treatment or punishment, 1984.
- 4) International conventions on the protection of the rights of all migrant workers and members of their families, 1990.

All the above conventions gave rights to individuals to file petition against the own state if their rights are violated.

3) Rights to Conciliation and Arbitration Proceedings:

Private foreign investors were given rights to settle dispute with investment receiving states, by way of conciliation and arbitration. Both the States must have consent to settle the dispute by arbitration and conciliation before the dispute is referred for arbitration and conciliation. This right to settle dispute by arbitration and conciliation has been given by the Convention for the settlement of investment disputes between states and nationals of other states, 1965.

These were the rights given to individuals under rules of international law.

Duties of individuals:

Rights of international law impose certain duties upon the individuals. If the individuals commit offence, they shall be directly responsible for it. There are many crimes for which individuals can be held responsible under rules of international law. Some of them are as under –

1) Offence of piracy:

According to Convention on Law of the Sea, 1982, piracy means an illegal act of violence or detention or any act of depredation, committed by the crew or the passengers of a private ship or private aircraft against another ship or aircraft or against the person or property on board of such ship or aircraft.

The offence of piracy is punishable under international law. The offender can be punished by any state, which arrests such offender. The offender guilty of piracy can be arrested, tried and, punished by any state. The state has also right to seize the vessel involved in the act of piracy.

2) Violation of the rules of warfare:

If an individual who is also a member of armed force of belligerent State violates the rules of warfare, then such individual can be punished belligerent. The offender can be punished either under domestic laws or under international law. According to the judgment delivered by international military tribunals in

1946, individuals are bound to follow the duties and responsibilities imposed under rules of international law. International law can be imposed by punishing the individuals who have committed crimes against international law.

3) Offence of Espionage:

The term espionage means, an act of obtaining the information by a soldier or an individual regarding the belligerent state for the purpose of communicating it to other belligerent. Hague Regulations provide for the punishment for the individuals who are involved in procuring the information. Individuals who commit the offence of espionage or war treason are called war criminals and are liable for punishment. The punishment can be either hanging or shooting.

4) Crime of Genocide:

The crime of genocide is punishable under international law. The crime is punishable whether it is committed by private individuals, public officials or the statesmen. Genocide was declared as crime under international law by the Convention on the Prevention and Punishment of the Crime of Genocide. This Convention is known as Genocide Convention. It came into force on 12th January, 1951.

5) Aircraft hijacking:

Hijacking of aircraft is a crime under international law. An individual is liable for punishment for committing a crime of hijacking, Individuals can also be punished if they commit any unlawful acts, which are against the safety of civilization.

6) Offence of kidnapping of diplomatic personnel and other persons:

If an individual is involved in the kidnapping of any diplomatic personnel or any other, he shall be guilty of commission of crime and shall be liable for punishment. This crime was declared as punishable under following Conventions –

- a) Convention on prevention and punishment of crimes against the internationally protected persons including diplomatic agents, 1973;
- b) Convention on Taking of Hostages, 1979.

7) Offence of apartheid:

Apartheid is an African term. It means, separateness or segregation. Apartheid is a policy of South Africa. According to it, the violation of human rights, genocide and slavery is a crime against humanity. Convention adopted by General Assembly on 30/11/1973, says that the crime of Apartheid is punishable whether committed, abetted or participated in the commission either by individual members of organizations and institutions.

These are the rights and duties given to individuals under rules of international law.

Thus, we can say that international law grants personality to individuals in the form of rights and duties.

Q. 11 : Define state. What are the essentials of state ? What are the kinds of state ?

Answer :

The term 'state' has different meaning in constitutional law, than that in the international law. Under international law, state means a territory occupied by the society of man where the members of society are governed by the government, and such government has capacity to enter into relations with other entities. An entity possessing above attributes can be termed as a state.

Montevideo Convention on the Rights of Duties of States, 1933, laid down certain qualifications for an entity to be called as a state.

Accordingly, a state should possess following qualifications –

- 1) A permanent population;

- 2) A defined territory;
- 3) A government; and
- 4) Capacity to enter into relations with other states.

Thus, as per Montevideo convention, if an entity possesses all the above four attributes, it can be called as a state.

1) Permanent population:

The term 'population' means, people. People are those individuals who live together as a community. The people may belong to different races, creeds or cultures. They may be also of different colours. The population must be permanent i.e. the people must be linked to a specific territory on a permanent basis, i.e. who can be said to be inhabitants of that territory. A territory in which the population exist in a haphazard way is not the state. The state should have a permanent population.

2) A defined territory:

An entity to be called as a state, it must have a defined territory. The size of a territory does not matter. A territory can be either small or large. Even though Montevideo Convention laid down that the territory should be a defined territory. Defined territory does not mean that, the territory of the state must be certain. At present there is a dispute between the numbers of states over the extent of the border of their state, but they are still defined as states.

For example, Israel does not have a fixed territory, but it is still called the state.

Case law:

Deutsche Continental Gas Cesseishaft v/s. Polish State –

In the above case, the tribunals held that, statehood of any entity does not depend upon the possession of rigidly fixed boundaries.

Thus, for an entity to be called as a state, it should have some territory, however small it may be.

3) Government:

The entity having population and territory, must be governed by a government. The state should have a government. If the state does not have a government, it shall not be called as a state. All the activities of state are carried out by the government. It is not necessary that the government should be an effective government.

Government can be of the following types –

- a) De-jure government;
- b) De-facto government;
- c) Military government; and
- d) Government in exile.

Thus, a state should have government.

4) Capacity to enter into relations with other States:

In order to be called as the state under international law, an entity must have the capacity to enter into relations with other states. If the state is not capable of entering into relations with other states, then it shall not be called as a state.

Examples :

a) In a federal state, there are two governments, one at centre, is called Central Government and other is State Government of different States of the Federation. The different States of the federal state do not have capacity to enter into relations with other states under the international law. Hence, under international law they are not called as states.

b) India is a federal state with Central Government and various State Governments, these State governments do not have capacity to enter into relations with other States under international law. Hence, under international law, they cannot be called as a state. Thus, if all the attributes are present in a State it can be called as a state.

Micro states also called as mini states are very small in area, population. The human and economic resources of these states are also very less. But, these micro-states are independent and called states under international law.

Kinds of states:

There are three kinds of states, they are –

1) Sovereign states:

The term 'sovereign' means, the supreme power. Sovereign state means the state which has supreme authority within its territory. A sovereign state is a single state which has one political supreme authority; it has a government which represents the state both, internally, and externally. Sovereign state is an independent state. It is independent both, in the internal affairs, and the external or foreign affairs. Sovereign in the internal affairs means, the state can adopt any Constitution as it likes, with its territorial supremacy. It can enact any law as it deems fits, organize its forces on land or sea, etc. Independence in external affairs means, a state can frame its own foreign policy, relations with other states and decide about any foreign that will affect it. When a state is sovereign both, in the internal, and external affairs, it means, the state has supreme and absolute power, which cannot be restricted by any law or treaties.

This is known as the Sovereign state.

Sovereign Equality of states –

Max Huber has defined the term "sovereignty" in the following words – "Sovereignty in the relation between states signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of other states functions of a state only sovereign states are entitled to be the members of the family nations.

Hobbes viewed that by absolute and complete power of sovereignty, as the Supreme Power over a definite territory unrestricted by earthly power. According to Austin, sovereignty is indivisible and illimitable.

Principles of Equality of states :

As the members of international community, in principle, all states are equal. This equality is due to their international personality being dissimilar in respect of the territories, population, power, civilization, prosperity, etc. all states as international persons are equal

According to Oppenheim following are the consequences of legal equality –

- i) when any question is to be decided by consent, each state is entitled to have one vote, but there are exceptions to this rule, such as the veto of the permanent member of the Security Council;
- ii) Legally importance of votes of the weak, as well as, strong nation is the same;
- iii) No state can exercise jurisdiction over another state. This rule has been applied by the Courts many times.
- iv) Generally, the Courts of a state cannot challenge the validity of the official acts of another state, as these acts are related to the jurisdiction of that state.

The common interest of state, thus, requires the transformation of state sovereignty into a general, universal principle of international relations mutually binding obligation to respect one another's sovereignty. This obligation has been created by International Law, as the inter-state agreements does not restrict sovereignty. It establishes the limits of a state's freedom of action with due respect for the sovereignties of other state.

Sovereignty in international relations means that the state is independent in international affairs as long as it keeps within the bounds of the mutually binding rules of International Law. Draft Declaration on rights and duties of states has regarded that it is one of the duties of the state to conduct relations with other states. Article 14 of the Declaration states that every has the duty to conduct relations with other states in accordance with International Law and with the principle that the sovereignty of each state is subject to

the supremacy of International Law. Thus, a state has absolute freedom of action except as it has agreed to rules restricting to that freedom. There is a close link between state sovereignty and International Law.

2) Non-fully Sovereign states:

To be called as a international person, it is not necessary that a state should be sovereign. A state shall be deemed as a international person, even if the smallest degree of attributes of sovereign state are passed by a state. These states are called not fully sovereign state. Non-fully sovereign state ensures the rights and fulfill the duties imposed by international law. These states are always under the authority of one or more states.

The non-fully sovereign states are of following types –

- 1) Protectorate states;
- 2) Vassals states;
- 3) Federal states;
- 4) Communist states;
- 5) Associated states;
- 6) Trust territories.
- 7) Not-typical states.

1) Protectorate states:

When a state, by a treaty, places itself under the protection of another stronger state, then the former state is called the protectorate state. In such a case, the control of the foreign relations is given to the stronger state while the control over the domestic government is with the protectorate state. The relationship between two states is called protectorate. Under international treaty, protectorate could be created.

Examples:

- a) By treaty of friendship, concluded on August 1949, Bhutan became the protectorate state of India.
- b) Ionian Island are the protectorate states of British. A protected state is not a sovereign state, they possess all rights who they have not surrendered to the protecting state. They are, nevertheless, international person and subject of international law.
- c) By a treaty concluded on 5th December 1950, Sikkim became the protectorate state of India. But, in 1974, when Sikkim became an associated state of India, the protectorate of India over Sikkim was dissolved.

2) Vassal states:

Vassal state is a state which remains under the suzerainty of another state. The term suzerainty means the right of one state where state to rule over the another state. Vassal state does not have right to enter into relations with another state. The suzerain i.e. the state who has agreed to rule another state i.e. vassal state takes away all the rights of vassal state to enter into relation with another state. Since, the vassal states are independent in the internal affairs, they are non-fully sovereign states. Any international treaty concluded by the suzerain state is for the vassal state. The war of the suzerain is the war of the vassal state. For action of the vassal state, the suzerain state can be held responsible.

Example: Tibet is a vassal state under the suzerainty of China.

3) Federal states:

When several states form a union to form one state, then such a state is called federal state. A federal state has its own organs. It exercises its power, both, over the member state, as well as, the citizen of the member states. The union of the federal states is based upon the international treaty between the member states and adoption of the constitution of the federal state. The member states of the union are not independent nor do they have supremacy over any territory. All the powers under international law are exercised by the federal state only.

4) Commonwealth states:

Commonwealth is an association of independent sovereign states. Commonwealth is not a federation of state. It does not have any formal alliance. Commonwealth is not a super state. It is just an Association of states which are free and equal with each other. During the period from 1931 to 1946, the term Commonwealth was called as "British Commonwealth of Nations". In 1946, the word "British" was removed from the official use. The basis of judicial system in Commonwealth is mostly Common Law.

But in –

- a) Canadian province of Quebec, judicial system is based on French law.
- b) Ceylas and Rhodesia, judicial system is based on Dutch Roman law
- c) Muslim countries of Asia and Africa, judicial system is based on Muslim civil law.

The British Monarch is the symbol for the Commonwealth, which signifies unity between member states. Monarch does not have any constitutional significance.

5) Associated states :

The states which are associated with some bigger states are known as associated states. Associated states are independent in internal affairs. They have the right to get separated and become independent. Because, of its unique status, an associated state is different from federal states or the union of states. The relationship between the state and associate state is determined by the terms of treaty between them.

Examples:

- a) Commonwealth of Puerto Rico was an associated state of United States.
- b) Caribbean territories associated with United Kingdom.

6) Trust Territories:

Many territories emerged on the international platform, after 1st World War. The political setup of these territories was not fully developed as they could not be declared as independent states. The League of Nations decided that such territory should be put under the administration of other state. This system of putting under administration of other state was called as mandate state and the administration of state is called as mandatory state. The mandatory states were laid by the administration of mandatory state. As per the consideration agreed between the League of the Nations and the mandatory states. After the dissolution of League of Nations, United Nation Organization was established. United Nations Organization came out with the system called as "trusteeship system", under this system, the mandatory states place the improved mandate state under their control. Such states are known as "trust territories". Trust territories are not sovereign state. The mandatory state exercises sovereignty over the trust territories. But, trust territories are not the part of mandatory states. In case of trust territories, the residual sovereignty is vested in the people of trust territories. But, the effective sovereignty is in the hands of United Nations and the mandatory state i.e. the administering state.

7) Not-typical states:

Some states even though they are sovereign states, they are not like the sovereign states. Due to the presence of certain peculiarities, they are different from the typical sovereign states.

Some of non-typical states are –

- a) Holy see;
- b) Neutralized states;
- c) Free cities.

A) Holy See:

Holy see is a small sovereign state. It has a half square kilometre of land territory. The population of Holy see is about 1000 persons. Bishop of Rome which is commonly called as Pope is known as holy see. Holy see includes the offices of Roman Church through which the Pope governs the universal Church. Vatican city state is sometimes, referred to as holy see, even though holy see is very small state, it possesses international personality.

B) Neutralize state:

A neutralize state is one which declares that, it will never take up arms against any other state and shall adopt the attitude of impartiality in all the wars that may occur in the world. But, a neutralize state reserves the right to retaliate in case of aggression. The declaration made by the state must be guaranteed by the other states by an international agreement.

Neutralize states are not fully sovereign states, because of their special status, they are different from other states. A neutralized state can cease to have the neutral state by,

- 1) Consent of the state which has given guarantee by international agreement; or
- 2) Suo Moto by violation of the condition of neutrality, and declared by it.

Example: Switzerland declared itself permanently neutral and its neutrality was recognized and guaranteed by the European powers.

C) Free Cities:

One independent town is known as free city. They have a specific political formation. The status of free cities depend upon the agreement entered into with other state. Free city has international status, because, they are independent and inviolable.

Example: Trieste is a free city, a zone of which is administered by Yugoslavia and rest is administered by Italy. A Committee known as Italy-Yugoslavia Committee, supervises the treatment of the national group in each zone.

Q. 12: Explain fully what constitutes state Territory.

OR

What is state ? What are the consequences of straight territory ?

Answer :

For a state to come into existence, it should have a territory. It is one of the attributes of statehood, which a state should possess. There cannot be a state without a territory. A state territory is a territory over which a state has an overall control.

Thus, the state has a property in the form of territory. A state territory is not confined only to land under it supremacy, but it is more than that.

A state territory is comprised of –

- a) Land territory;
- b) National waters;
- c) Territorial sea (which was previously called as territorial waters);
- d) Air space above the territory;
- e) Sub-soil under earth.

1) Land Territory:

All parts of the land within the boundaries of the state, form the Land territory of the state. A boundary is a line of demarcation which separates the territory of one state from the territory of other state or from the open sea or from the unappropriated territory.

Boundaries of a state are of two kinds –

- a) Natural boundaries;
- b) Artificial boundaries.

a) Natural boundaries:

Rivers, range of rocks or mountains, forests or deserts are the natural boundaries of the state. Natural boundary means, the boundary formed by nature.

b) Artificial boundaries:

Artificial boundaries are constructed by the states for dividing the territories. Artificial boundaries are walls, pillars, poles, trenches, etc.

2) National Waters:

Internal waters within the boundary of the state are called as national water. National water includes –

- a) Water in its canal;
- b) Water in its river including the water at the mouth;
- c) Water in the ports and harbours and in some of the gulfs and bays of the national water.

A) Rivers :

i) River which flows from its source to its mouth, totally within the boundaries of only one state. State has an exclusive right over such river. No other state can claim the right to navigate on such rivers. Hence, they are called as national rivers, e.g. Thames river.

ii) River that divides two states from one another. Such rivers form the river boundary of the two states.

iii) River that flows through two or more states. Such rivers are called non-national rivers and are owned by one or more states through which they flow. Each state is the owner of any that part of the river that flows through its territory. Such rivers are called as Bilateral or Plurilateral Rivers and the states on whose territory the river flows is called as riparian state.

iv) The river that flows through more than one state and in which navigation can be done from the open sea. Such rivers, even though flows through more than one state are called international rivers. In the time of peace, there is a freedom of navigation on such rivers.

B) Canals :

Canals constructed by the states are the part of the territories of states, which has constructed it. The state has an exclusive control over such canals. There are some canals, which affect the international water way system or international drainage system. Such canals are called as inter-oceanic canals. All the states have right to navigation through such canals. An exclusive control over such canals is exercised by the territorial state.

Example : Suez canal, Panama canal and Kiel canal are inter-oceanic canals.

C) Straits :

If a straits divides the land of only one state, then such strait belongs exclusively to that state only. Coastal state has a sovereignty over the straits which are not wider than 6 miles. The straits whose breadth is more than 6 mile wide are called as international straits. Other states has right of innocent passage over the international straits.

Case Law :***Corfu channel case –***

It was held by International Court of Justice in this case that, if any state wants to exercise the right of innocent passage over the straits, then prior permission of the coastal state, which is exercising the sovereignty over the strait, is not required.

D) Bays :

A bay is a well-marked indentation which penetrates into the mouth and locked waters, proportion, to the width of mouth is such that, it contains the land locked waters. A bay should be more than the mere curvature of the coast.

For an indentation to be called as a bay, it is necessary that the total area of the indention should be equal to or more than the area of a semi-circle, which is formed if a line is drawn across the mouth of that indention. The water in the bay belongs to coastal and the coastal state has right to exercise its sovereignty over the bay.

Land Locked Seas and Lakes:

If the land of one and the same state, entirely encloses the lakes and land locked sea, then, they shall form the part of the territory of that state. Such lakes and land locked sea can form the part of international navigable waters, international drainage basin or water course system.

[See May, 2012 Question Paper].

3) Territorial Sea :

The Coastal states area having sovereignty over the territorial sea. Territorial sea are extended upto 12 nautical miles measured from the appropriate base lines. Coastal states have complete sovereignty over this area. Other states have got right of innocent passage through the territorial sea. If the coastal states impose certain law, rules or regulations, other states are bound to follow these rules. Coastal states have right of fishing and exploring natural resources from the area under territorial sea.

4) Air Space :

Literally airspace means, the space over the earth filled with air. The sovereignty over the air-space is exercised by the state. The limit of airspace is limited only to the airspace above the state territory.

No state can exercise sovereignty over the air space above high seas and unoccupied territories. Many jurists were having different views regarding the airspace above the land territory and territorial sea of the states. The difference in views has led to the emergence of theories regarding the airspace.

There are 4 theories. They are –

a) Free air theory :

As per 1st theory, airspace is totally free and any state can have access to it. According to this theory, the air cannot be apertened and given to different states. This theory called free air theory.

b) Absolute sovereignty upto certain height theory :

According to 2nd theory, the subject state i.e. the state over whose territory the airspace is there, has sovereignty over airspace only up to certain height. The airspace above that level shall be free for all. For navigation according to this theory airspace above the state territory can be divided into two zones i.e. the lower zone and upper zone. The subjacent state can control and regulate the airspace in the lower zone and shall have sovereignty over it. The airspace in the upper zone shall be free and open to the navigation to all. It shall be a public property. This theory is called absolute sovereignty upto certain height theory.

c) Complete sovereignty theory :

According to 3rd theory the subjacent state has absolute and complete sovereignty over the airspace above the territory and territorial sea. The sovereignty is not limited to any height. The sovereignty can be exercised up to unlimited height. The theory is called as complete sovereignty theory.

d) According to 4th theory, a state has complete sovereignty over the air space above its territory :

This sovereignty is subject to right of innocent passage which can be exercise by all the foreign civil aircraft.

Thus, the state has sovereignty above the airspace above land territory and adjacent territorial water. The state has right to regulate the flights through the airspace above its territory.

5) Sub-soil under Earth :

The state has complete sovereignty upto unlimited depth in subsoil. Subsoil under land territory and under territorial water up to unlimited depth belongs completely to the state, which is the owner of such territory.

Over the surface of the land and adjacent territorial waters. The subsoil under territorial land and water are useful for,

- a) Telegraph and telephone wires;
- b) Working of mines; and
- c) Building of tunnels.

These are the territories of a state under international law.

Q. 13 : What is Recognition of state and Government ? Discuss fully various theories of recognition.

OR

What is the importance of state recognition and what are the types of recognition ?

OR

Write a short note on :
Recognition of state.

OR

Explain the theories on the recognition of state. Which theory appears correct ?

Answer :

A state should have certain attributes of statehood, in order to be called as state under international law. The essentials attributes of statehood as per international law are –

- 1) Population;
- 2) Territory;
- 3) Government; and
- 4) Capacity to enter into relations.

When a state possesses all the above four attributes of statehood it becomes a state under international law. When the existing state under international law, recognizes and acknowledges the above four attributes of the state, it is known as recognition of state.

The definition of Recognition of state:

A formal acknowledgement made by the existing state known by international law of the international personality of the new state, is called as recognition of state. Thus, by recognizing the state, the existing states recognize the international personality of new state.

When recognition is granted to a state, it establishes that –

- a) State possesses all the attributes of statehood required under international law.
- b) State is an international person having rights and duties imposed under international law at present, the rules are not fixed as to which states should be given recognition.

Examples :

- 1) Israel was established in 1948, but few Arab states did not give recognition to it.
- 2) People's Republic of China was a state, but it was not given recognition by United States for many years.

Due to controversy over the Legal significance of recognition, different theories of recognition have emerged. They are –

- a) Constitutive theory; and
- b) Declaratory theory.

a) Constitutive Theory :

According to this theory, state by acquiring all the attributes of statehood does not become a state. In order to acquire international personality of a state, a state must be recognized by the other existing states. Thus, it can be said that, with the grant of recognition by existing states, the international personality of the state comes into existence. This theory was propounded by Anzilotti and Holland. According to this

theory, an act of recognition is very important for the international personality of new state.

There are many drawbacks of this theory.

They are –

1) The recognition by the existing states of a new state is not a conclusive proof of an existence of a state. This is so, because, when a state acquires all the attributes of statehood, it is recognized by some states only. Some states do not recognize the international personality of that state. So, as per constitutive theory, a state exists for some state while it does not exist for other states.

Example : China was recognized by many states, but United States gave recognition to China in the year 1979 only.

2) According to this theory, the fate of a new state is determined by other states. Which means the act of recognition is a political act of state. Thus, recognition is discretionary power of existing state. Giving discretionary rights to existing state is fatal to act of recognition.

3) Recognition means, acknowledgement of possession of all the attributes of statehood. It means that, the state is in existence even prior to the recognition. If the state is not in existence, the question of recognition will not arise.

4) When the state is recognized by existing state, then it is deemed that the existing state has recognized all the acts concluded by the new state since it was established. Thus, it can be said that the recognition has Retrospective effect.

b) Declaratory Theory :

According to this theory, as soon as, all the attributes of a statehood is acquired by the state, a state comes into existence on an international platform i.e. it gets the international personality. A state exists in fact, when it possesses all the attributes of a state. Recognition by the existing state is the evidence of the fact of existence of state. Thus, an act of recognition is a just a declaration made by the existing states, that a new state possesses all the attributes of statehood. The propounders of this theory are Hall, Brierly and Fisher. According to them, a state exists even without recognition. Recognition is necessary only because it enables the state to enter into relations with other states. The effect of recognition is that, it helps in creating the relationship between states. This theory is better than constitutive theory.

This theory also have many drawbacks, they are as under –

1) A state can exist by acquiring all the attributes of statehood, but it cannot enter into legal relationship with other states unless it is recognized by the existing states under international law.

2) According to this theory, recognition is immaterial. It is only a evidence of fact of existence of state having attributes of statehood.

3) This theory has some elements of constitutive theory.

Both the theories are not correct and useful in isolation. Declaratory theory has few elements of constitutive theory.

The statehood can be divided into natural statehood and juridical statehood.

1) **Natural statehood:** When state acquires all the essentials attributes of statehood it comes into existence. It acquires international personality and possesses few rights of existence. Even it is not recognized, the state possesses natural statehood.

2) **Juridical statehood:** when a state is recognized by the existing state, it acquires the juridical statehood. When some specific rights are given to a state it acquires juridical statehood. Thus, it can be said that recognition is both, declaratory, and constitutive

The recognition can be given in two ways –

- 1) An express recognition; and
- 2) Implied recognition.

A) Express Recognition :

When the existing state gives recognition by a notification or declaration and announces their intentions of recognition to new states, the recognition is said to be an express recognition. The express recognition is a formal declaration, which is a public statement. The copy of the notification or declaration is sent to the party which is recognized as a state.

Example : Recognition of Bangladesh by India on 6th December 1971, is an express recognition. Conclusion of treaty can also be employed for giving recognition to the state.

B) Implied recognition :

When the existing states indicate their intention to recognize the new state by some acts, then the recognition is an implied recognition. Under international rule, no formal declaration is made regarding the recognition of new states as per Article 7 of the Montevideo conventions 1933. An act which implies the intention of recognition of new state, results into implied recognition.

This act may be a unilateral act or a collective act.

1) Unilateral act :

When any recognized state establishes diplomatic relations with any unrecognized state or when a recognize state concludes of bilateral treaty with any unrecognized state, then such a recognition is called as implied recognition by unilateral act.

The intention of recognition of new state indicated when,

- a) Recognize state sends representative to attend ceremonial function in an unrecognized state.
- b) By exchange of councils between recognized and unrecognized states.

2) Collective acts :

When the existing state recognizes a new state collectively, then the recognition is called implied recognition by collective act.

Following are the collective acts of recognition :

- 1) Participation of unrecognized state in a multilateral conference.
- 2) Participation of unrecognized state in a multilateral treaty.

Under above cases, it is deemed that the other states which have participated in the conference or who have been the party to the treaty, recognize the new states.

Q. 14 : Distinguish between De Facto recognition and De Jure recognition. What are the legal effects of de facto and de Jure recognition ?

OR

What are the importance of state recognition, and what are the types of recognition ?

OR

What is recognition of government ? Comment on De Facto recognition.

Answer :

Recognition of a state can be of two types. They are –

- 1) De facto recognition; and
- 2) De jure recognition.

1) De facto recognition:

A state may be recognized by the existing states. But, if the existing state is of the opinion that the new state is not sufficiently stable, then the recognition granted to the new state is only provisional recognition. This provisional recognition due to instability is known as the De facto recognition. A state granted De facto recognition when the existing state giving recognition considers that, even though the new state has a legitimate government, but the effectiveness and the chances of continuity of the government is doubtful. In case of De facto recognition, the new state is independent and exercises an effective power within its territory. But, it is not so much stable as will be able to comply with the requirements of recognizing. De facto recognition signifies the willingness of the existing states to establish relationship with the new states. This willingness is only provisional. The De facto recognition can be withdrawn if the new state becomes incapable of administering its territory. When a state is given De facto recognition, then later when it is given De jure recognition, the effect of de jure recognition is retrospective i.e. from the date when the state was given De facto recognition. De facto recognition is the preliminary step towards De jure recognition.

Examples:

- 1) Great Britain gave De facto recognition to Soviet Union on 16th March 1921 and later on gave De jure recognition on 1st December 1924.
- 2) Italian conquest of Abyssinia got De facto recognition in 1936 and De jure recognition in 1938 by Great Britain

Effects of De facto recognition:

- 1) It enables the state to protect the interest of its citizen.
- 2) It enables the recognizing state to protect its interest and trade in De facto recognized state.
- 3) Diplomatic relations cannot establish with the De facto recognized state.
- 4) Diplomatic immunities in the recognizing state is not available to the representatives of the De facto recognized states

This is De facto recognition of state and its effect.

2) De Jure recognition:

De jure recognition is given to a new state when the existing state considers that –

- 1) The new state has all the attributes of statehood.
- 2) Such attributes are possessed by the state with stability and permanency.
- 3) The support of the population is with the government.

When the recognition is granted under above circumstances, it is called as De jure recognition. The De jure recognition is final. It is not necessary that De Jure recognition is to be given after De facto recognition.

De Jure recognition can be given even without prior De facto recognition. The De jure recognition can be granted directly when a new state comes to existence both peacefully and constitutionally. But, when an estate is comes into existence through revolt, then De jure recognition can be given after giving De facto recognition.

Example: Many states including United States of America gave De jure recognition to Israel.

Effects of De Jure recognition:

- 1) It enables to establish diplomatic relation with the recognized state.
- 2) Full diplomatic immunities in the recognizing states are granted to the representatives of the De jure recognized state.
- 3) When the state is recognized De Jure, it can claim to receive any property which is situated within the territory of recognizing state.

4) In case of property situated in the territory of another state is claimed by both, the De facto recognize state and De jure recognize state, then the claim of De jure recognize state shall prevail over the De facto recognized state.

Both, De facto, and De jure recognition give rise to legal rights and obligations.

Case Law:

Luther v/s. Sagor –

In this case it was held that, there is no defence between the De facto recognition and De jure recognition, when the internal acts of the recognized authority is to be carried out in effect.

Some other types of recognition:

1) Pre mature or precipitate recognition:

When recognition is granted to a state which does not possess all the attributes of statehood, then it is called as pre mature or precipitate recognition.

2) Conditional recognition:

When a recognition is granted to a new state subject to the fulfillment of certain conditions by the recognized state, then such recognition is called as conditional recognition. The fulfillment of certain condition is in addition to the possession of all the attributes of statehood.

Recognition of government:

Recognition of government is different from the recognition of states. When the recognizing state considers the existing government to be the sole representative of the particular state in the international intercourse, then such a consideration is the recognition of the government. When an internal change take place in a recognized state, then such changes do not affect the relation of state with other states. A state does not lose the recognition, and if there is change in the government, a change in the government of a state can take place by two ways –

- 1) By constitutional means or
- 2) By revolt i.e. through coup d'etat'

1) By constitutional means:

Change in the government of the state must be recognized by other states. When the change of government takes place by constitutional means, then recognition of government is just a formality. Recognition is granted when the change in government takes place due to elections in that state. Recognition, in such a case, is informal and by implication. It can be seen by continuation of the diplomatic relations between the states.

Example: In 1977, Congress government was changed by Bharatiya Janata Party or when in 1980, the Congress again came into power, the recognition of government was not at all important and it was recognized by implication.

2) By revolt or coup d'etat':

When the change in government is brought by revolt or coup d'etat', it gives rise to difficulty in recognition of new government. In such a case, the recognition is granted if,

- a) Other state is of opinion that the new government is stable.
- b) The new government is capable of controlling the people within its territory.
- c) The new government is capable and is willing to fulfil all its international obligations.

The practice of state to grant recognition to government was based on the possibility of the effectiveness of the government. The existing state can recognize the new government either De facto recognition or De jure recognition.

The new government is given De facto recognition if,

- a) The new government is not stable.
- b) The new government do not want to follow the rules and principles of international law.
- c) The new government is not willing to settle outstanding issues.

If after being given De facto recognition to government, the recognizing state is of the opinion that the government has an effective control and it shall continue, in an effective way, then the De Jure recognition can be granted to such government.

In relation to recognition of government, two Doctrines must be considered. They are –

- 1) Tobar Doctrine; and
- 2) Estrada Doctrine.

1) Tobar Doctrine:

Tobar Doctrine was propounded in 1907 by Tobar, the Foreign Minister of Ecuador. Tobar Doctrine is also known as Doctrine of Legitimacy. The treaties concluded in 1907 and 1923 embodies the Tobar Doctrine. In these treaties, the five Central Americans republics have found themselves that recognition should not be granted to any government which has come into existence by revolutionary means. If such a government is recognized by the people of the state in a constitutional manner then recognition to such a government can be granted. This is the principle of Tobar Doctrine.

2) Estrada Doctrine:

The Estrada Doctrine was propounded in 1930 by Estrada the Foreign Minister of Mexico. According to this Doctrine, if there are any revolutionary changes taking place in the country, then continuation of the diplomatic relations with that state shall be the duty of the other states, since the government which has come into existence due to revolt i.e. unconstitutional means, the government was not given recognition was regarded as interference in the domestic affairs of the government. This led to the emergence of Estrada Doctrine. Estrada Doctrine is also called as "Doctrine of Effectiveness". This is recognition of government.

Q. 15: Write short notes on :

- a) Recognition of Insurgency ;
- b) the Recognition of Belligerency.

Answer :

(I) Recognition of Insurgency:

When in a territory of a state of a civil war takes place and the rebels or the insurgent forces occupy a very large part of the territory, which was formerly governed by the parent government, then the rebels or the insurgent forces establishes the De facto authority over such part of the territory. The insurgent or rebels can, then claim to be subject of international law. When other existing states recognize such rebels or insurgents, then such recognition is called as recognition of insurgency.

For the purpose of recognizing the insurgency, the recognizing state must fulfill following conditions –

- 1) The insurgent must be in control of the large part of the territory.
- 2) The insurgent must be supported by the majority of the people staying in that territory.
- 3) The conduct of insurgents do not guarantee the compliance of the accepted rules of war.
- 4) Rebels or insurgents forces do not have a command of an organized authority within the territory under their possessions.

If above conditions are fulfilled, then insurgency is recognized by the existing states. Civil war in a state is the domestic affair of the state. International community should not interfere in the internal affairs of the state. When the insurgent or rebel forces are not in possession and control of the substantial part of the territory of the state and it is premature to recognize the rebels or insurgents, their existing states may support the rebels or insurgents, then existing state may support the rebel or insurgents, without giving the recognition.

But, sometimes recognition is granted for the purpose of –

- a) Protecting the interest of the citizens of the state under civil war.
- b) Protecting the property of the citizens of the state under civil war.
- c) For securing the commercial dealings

Recognition may also be granted to insurgents due to –

- 1) Political, religious or ideological affinities.
- 2) Considerations such as strategic and military.

In case of recognition of insurgency, the insurgents are protected as being treated as pirates by the recognizing state.

Example:

Great Britain had granted De facto recognition to the insurgents in the Spanish Civil War during the period of 1936 – 1939.

(II) Recognition of Belligerency:

Belligerency means, such a civil war within a state between the rival powers that existing state treat it as a real war. When the rebels of such a civil war are recognized, then it is known as recognition of Belligerency. By recognizing the Belligerency, recognizing state shows that the rebels are in a position to fully control the territory which is in their position.

For the recognition of Belligerency, certain conditions must be fulfilled.

They are –

- 1) The hostilities within the state should be general and local nature. It should be in whole of the state and not in a single port.
- 2) The major part of the national territory must be in control of the Belligerents.
- 3) The rival groups must act according to the law of the war.
- 4) The force of the rebel must be organized under a proper command.

If the above conditions are fulfilled, the rebels can be recognized by the existing states, such a recognition is called as recognition of Belligerency under international law.

When the Belligerency is recognized, both, the rebel groups, and the existing government,

- a) can exercise the right of belligerents.
- b) become subjected to the obligations that may be imposed on belligerents.

When the Belligerency is recognized, the recognizing state can opt to remain neutral. It can accord the rights of Belligerents to the warring parties.

Such rights are –

- 1) Allowing the entry of the ship of Belligerents into its port.
- 2) Right to visit and search the sea.

Rules of warfare applies to Belligerency.

This is recognition of Belligerency.

Q. 16 : Write short notes on:

- a) Rights of Aliens.
- b) Amnesty International.
- c) Minority Commission.

Answer :**a) Rights of Aliens.**

When a person who possesses the nationality of one state, is present in another state, then such person is legally termed as alien. Aliens mean those persons who live in that state, of which they do not possess citizenship or nationality. When a person enters a foreign territory, he becomes the subject to the Municipal Law of that country unless he is a diplomatic agent or is a recognized official of the foreign Government. This rule is based on the principle that a State enjoys territorial sovereignty.

Havana Convention 1928 gives status of aliens. The state has a discretionary power to admit an alien. The state has power to include the aliens from its territory. The state has a power for both, admissions of an alien into its territory, and prohibit the entry of an alien in its territory. The aliens can also be conditionally admitted in the territory of a state. The state has the right to impose the conditions regulating the entry of the aliens into the state. On the basis of the foreign policies, the municipal laws of the State can impose such conditions of entry.

Example:

A socially and morally unfit alien is prohibited to enter into the territory. If the presence of any alien has become undesirable, the state has a right to deport such alien back to his state.

Before an alien enters into foreign territory, he must obtain a valid visa and must carry a valid passport showing the state to which he belongs. At present there is no fixed law on the rights of aliens. Aliens can exercise the rights according to the practice of the state. To ensure his private life, the aliens are given certain rights by the state in which he resides. These fundamental rights of the aliens cannot be revoked. When a treaty relating to commerce and establishment is concluded between the clause, it determines the rights of aliens. These treaties contain a clause called "national treatment clause". As per this clause, the aliens are entitled to same treatment as the citizens of the state receive. All the procedural rights which are available to the citizens are available to aliens. The substantive rights given to citizens of the country are also available to the aliens.

Following rights are denied to aliens :

- 1) Special civil and political rights;
- 2) Right to vote;
- 3) Right to hold public office;
- 4) Right to engage in political activities;
- 5) They cannot be employed as master, chief officer or chief engineer of merchant Navy;
- 6) They cannot join civil services.

Following rights are available to aliens and are available to citizens of a State :

- 1) Right to personal security;
- 2) Right to personal liberty;
- 3) Right to property;
- 4) Right under a contract, whether limited by any clause or not.

If the rights of an alien violated, they can have the recourse to the court of the state and redress his grievances on the same footing as that of citizens.

When an alien approach of the court for the redressal of grievances and the aliens receive the treatment in contravention of a convention, then the state to which the alien is a citizen can sue the host state for compensation in the International tribunal. Such matter cannot be brought before the International Tribunal until the legal remedies available to the alien in the host state is exhausted.

This rule is known as local remedies rule.

b) Amnesty International.

It is non-governmental organization, a worldwide human rights organization established on May 28, 1961 with a newspaper appeal by a British Lawyer Peter Berenson. Now it has 11 Lakhs members in more than 15 countries with 6000 local groups in 70 countries in Africa, America, Asia, Europe and the Middle East. It won the Nobel Prize for peace in 1977. Its international Secretariat is at London, U.K.

Amnesty International seeks to inform public opinion about violation of human rights, abridgements of freedom of speech and of religious and the imprisonment of political dissidents who are tortured. Amnesty International seeks the release of Political Prisoners and the relief for their families.

Amnesty International publicizes governmental wrong doing in newspapers, Annual Reports and background papers. It has a world-wide distribution of "adoption groups" who takes the cases of prisoners of conscience and barrages the offending Government with letter of protest until the prisoners are released.

c) Minority Commission.

The sub-commission on Prevention of Discrimination and Protection of Minorities was established under the authority of Economic and Social Council (ECOSOC).

Resolution 9 (ii) of June 21, 1946 to make recommendations to the commission.

Concerning the prevention and discrimination against racial, religious and linguistic minorities. The sub-commission is composed of 26 members elected by the commission subject to the consent of their governments, members serve in their personal capacity as individuals and not as representatives of their governments. The sub-commission which meets for four weeks each year, has four standing working groups –

- 1) Working group on communication which examines complaints of human rights violation;
- 2) Working group on contemporary form of slavery;
- 3) Working group of indigenous population;
- 4) Working group on minorities. It also established seasonal working groups or appointed special reporters to specific issues such as rights of persons detained on grounds of mental ill-health or the human rights implications of the new international economic order.

The sub-commission has been studying concrete aspects of –

- a) discrimination in employment and occupation;
- b) discrimination in matters of religious rights and practices and in the matter of political rights;
- c) discrimination in respect of every one to leave any country, including his own and to return to his own country;
- d) discrimination against persons born out of wedlock;
- e) equality in the administration of justice;
- f) racial discrimination in the political, economic, social and cultural spheres.

Q. 17: State the essentials of a treaty. Discuss the steps involved in the inception of treaties.

OR

State and discuss the various steps towards conclusion of treaty.

OR

Define treaties and its kinds. Explain the term 'reservation' in treaties.

OR

Discuss the various steps involved in the conclusion of treaties.

OR

What is a treaty ? Explain the rules as to interpretation of treaties.

OR

How an international treaty is formed ? Do treaties need ratification in all cases ?

OR

**Write a short note on :
Reservation in treaty.**

Answer :

Definition of treaty:

The term treaty means, a written agreement by which two or more states or international organizations create or intends to create a relation between themselves, which operates within the sphere of international law.

Analysis:

- 1) Treaty is a written agreement, hence, treaties should be in writing. According to the Vienna Convention on the law of the treaties 1969, a treaty should be in writing only.
- 2) The two parties entering into treaty can be either two states or two international organizations or it can be between state and international organization.
- 3) The purpose of entering into treaty is to create the relation between them. Such relation can be legal, political or moral. Thus, the purpose of treaty should be to create relations.
- 4) The operation of treaty should be within the sphere of international law. If it is not operating within the sphere of international law, then it shall not be a treaty.

A treaty is known by different names, these are as under:

Convention, agreement, protocol, declaration, arrangements, accord, additional articles, aide memorie, Code, communique, compact, contact, instrument and optional clause.

Due to the uncertain nature of customary international law, International Law Commission proposed the codification of law of treaties. On 23rd May 1969, the Vienna Convention on the law of treaties was adopted. The Convention has a Preamble on 85 articles. The Convention is divided into 8 parts. When 35 states ratified it, it came into force on 27th January 1980. Till 1st October 2000 the Vienna Convention was ratified by 90 States.

Kind of treaties:

There are three kinds of treaties. They are –

- 1) Bilateral treaties;
- 2) Plurilateral treaties;
- 3) Multilateral treaties.

1) Bilateral treaties:

The treaty concluded between two states is known as bilateral treaties. Bilateral treaty is concluded only between two states which are parties to treaty. The rights and obligations which arise from the treaty is applicable only to the two states which are parties to it. These treaties are called as bilateral treaty.

2) Plurilateral treaties:

The treaties that are concluded between only the restricted numbers of states are known as plurilateral treaties. In this treaty, the minimum number of parties are more than two. But, the maximum number of members should not be all or the majority of members of international community. Thus, the maximum number of members in the plurilateral treaty is restricted. Plurilateral treaties concluded for various purposes, they can be –

- a) For maintenance of peace and security in a specific region.
- b) For the development of trade and commerce between the participating members.
- c) For creation of rights and obligations for the benefits of the participating states.

Examples:

- a) North Atlantic Treaty organization (NATO);
- b) League of Arab states, etc.

3) Multilateral treaty:

The treaty concluded between members of state of the international committee is known as Multilateral treaty. Any number of states can be party to Multilateral treaty, there is no restriction on the maximum number of parties to the multilateral treaty. General norms of international law laid down by a Multilateral treaty. Multilateral treaty can be treated as international legislation. The law laid down by Multilateral treaty can be followed to settle the general disputes between the states who are parties to Multilateral treaties, as well as, those who are not parties to Multilateral treaties. Multilateral treaties are also known as Law-making treaties.

Steps towards the conclusion of treaty:

There is no specific procedure or form prescribed by international law for the conclusion of treaty.

Following steps are involved in the conclusion of a treaty :

- 1) Appointment of persons by the contracting state;
- 2) Negotiation;
- 3) Adoption of the text;
- 4) Consent of the states;
- 5) Entry into force;
- 6) The Registration and publication.

1) Appointment or accrediting of persons by the contracting states:

This is the first step involved in the conclusion of treaty. In this step, the state should appoint the representatives who should have necessary authority for concluding the treaty. A formal instrument showing the appointment of such is given to the representative by the Head of the state or the Minister of foreign affairs. This instrument is known as "full powers". According to Article 2 (1) (c) of the Vienna Convention full power means a document given by the competent authority of the state, which shows the appointment of person or persons to represent a state. Such representation can be for –

- 1) Negotiation;
- 2) Adoption of the text of a treaty;
- 3) Authentication of the text of the treaty;
- 4) For giving the consent of the state, to be bound by the treaty;
- 5) For doing any other act in relation to the treaty.

For conclusion of treaty, the representatives should exchange full powers.

When it is concluded by the following persons on behalf of the state then full powers are not required :

- 1) Heads of the states;
- 2) Heads of the government;
- 3) Minister of foreign affairs;
- 4) Heads of diplomatic mission; and
- 5) Representatives appointed for international conferences or organizations.

All the above persons are deemed to represent the state ex-officio.

2) Negotiation:

Negotiation may be entered into by the accredited person representing the contracting state. During negotiation, the proposal is discussed, harmonized and agreed tentatively by accrediting person. The representatives can consult the government during negotiations.

3) Adoption of text:

After Negotiation is completed the form and content of the treaty is settled. A text of the treaty is drafted which contains the provisions of the treaty. The states are set to adopt the text of the treaty if they express their agreement. In case of multilateral treaty, consent of all the states is required for the adoption of the text of the treaty.

According to Article 9 (2) of the Vienna Convention,

a) In an international conference, adoption of text of the treaty is made by vote of two third of the states present and voting. But, if the 2/3rd of the states indicate the application of different rules, then such rules shall be applied

b) In case of other treaties, consent of all the participating states is required for the adoption of the text of treaty.

4) Consent of states:

Consent is a very important step in the conclusion of the treaty. The treaty is binding upon the state only when the consent of the state is given to the treaty.

The consent of the state can be given in the following ways –

- a) Consent by signature.
- b) Consent by exchange of instrument.
- c) Consent by ratification.
- d) Consent by Accession.

a) Consent by signature:

When the text of the treaties is signed, then it means that the state has given its consent. When the treaty is signed or initialized, the text of the treaty becomes definitive and authentic. Thus, the consent is given by signature to the treaty. Vienna convention has recognized the act of signature or initial as a consent given by the state to the text of the treaty.

b) Consent by exchange of instrument:

When the text is given consent of the state to be bound by it, by exchange of instrument, then it is said that the consent is given by exchange of instrument. Such consent can be given if the instrument of treaty has a provision of giving the consent by the exchange of instrument. It can also be given when the state had agreed that the consent can be given by the exchange of instrument.

c) Consent by ratification:

The treaty may be signed by the representatives of the state, but it shall come into force when it is confirmed by the state. This act of confirmation of treaty by state is known as ratification. Thus, the consent to the treaty can be given by ratification. According to Article 2 (1) (b) of Vienna Convention and international act by which the state declares that it is bound by the treaty, is known as ratification. Thus, by ratification the signature put by the representative of the state is confirmed by the state. Consent by ratification can be given only when it is so provided by the terms of the treaty. The rights and obligations

under the treaty shall come into force from the date of ratification and not from the date of signature by the representatives of the state. The ratification does not have retrospective effect. Thus, the consent can be given by ratification by the state.

d) Consent by succession:

According to article 2 (1) (b) of the Vienna Convention, the act of accession means a declaration made by the state, that it has given consent to be bound by the treaty. If state is not a signatory to the treaty, then it can become a party to the treaty by acceding to the treaty. The provisions of the treaty determine the right to accession of a state to treaty. If the terms of the treaty do not provide for accession, then the state can become the party to do treaty only with the consent of all the states. Ratification by the state is not required in case of the state becomes the party to the treaty by accession. Both, the signature, and ratification is included in the act of accession.

These are the four ways by which the consent can be given by the states to the treaty.

5) Entry into force:

According to the provisions of the treaty, it shall come into force i.e. it shall either enter into force. As per article 24 of the Vienna Convention, the date and manner of entry into force of the treaty is provided in the treaty itself. It can also come into force as per the agreement between the negotiating states. If the date and manner of entry into force is not provided in the treaty, the treaty shall come into force at once, when the consent to be bound by it is given by all the states. Thus, the treaty can come into force as above.

6) Registration and publication:

After the treaty enters into force, it should be registered with the secretary-general of the United Nations. Article 102 of the Charter of the United Nations provides for the registration and publication of the treaty with the secretariat of United Nations. On 14th December 1946, General Assembly adopted the rules for the registration and publication of the treaties.

The purposes of registration and publication of treaties are:

- 1) Conclusion of the secret agreements between states are prevented by it.
- 2) After registration and publication of treaty, the violation of the provisions of the treaties become difficult.

These are the various steps involved in the conclusion of treaties.

Reservation in treaties:

Consent of state is required for the treaty to be binding upon the state. But, even after giving the consent, the treaty can be accepted by the state in part only. When a treaty is accepted by state in part and the legal effect of certain provisions of the treaty are excluded from application, then it means the state has consented to the treaty with reservations. The term reservation is defined under Article 2 (1) (d) of the Vienna Convention.

Accordingly, reservation is a statement made by the state unilaterally at the time of signing, ratifying, accepting, approving or acceding to the treaty. Such unilateral statement shows that the state intends to modify or exclude the legal effect of certain provisions of the treaty with regard to their application to that state. If the terms of the treaty prohibits the reservation, then such unilateral statements indicating the reservation cannot be made. But, if the scope of reservation is provided by the treaty, then state can accept the treaty subject to certain conditions.

Reservations made by the state shall be effective if it is accepted by the other contracting parties. In case of bilateral treaties, if the opposition party does not accept the reservation, the treaty is deemed to have been terminated. But, in the multilateral treaty if the state makes the reservations, if any, the treaty will not be terminated. The treaty shall be binding upon state which has made reservation. The binding effect shall be subject to the conditions and restrictions imposed by way of reservations.

According to Article 19 of the Vienna Convention, under following cases the state, will not accept a treaty with reservations,

- 1) If the reservation is prohibited by the treaty.
- 2) If the specific reservation which does not include the reservation made by the state is allowed to be made by the treaty.
- 3) If the reservation is contrary to the object and purpose of treaty.

Under above circumstances, the treaty with reservations cannot be accepted by the other parties to the treaty.

If the parties to the treaty are limited and treaty is to be accepted in its entirety, then the reservation made by any state must be accepted by all the other parties to the treaty.

If state makes any reservation and other state does not take any objection to such reservation within 12 months from the date of notification of reservation or within 12 months from the date on which the state gives its consent to be bound by it, then the reservation is deemed to have been accepted by other states.

Any party to the treaty who has made reservation can withdraw such reservation at any time in accordance with the provision of article 22 of the Vienna Convention. Withdrawal of reservation does not require the consent of state who has accepted the reservation. Such withdrawal of reservation shall be effective when the notice of such withdrawal is accepted by the other state. This is the concept of reservation in territories under international law.

Q. 18: State briefly the grounds in which treaty can be declared as invalid.

Answer :

A treaty concluded between the states is binding upon the state, but, if the treaty is declared invalid, then the binding force of the treaty upon the state vanishes. The treaty concluded between the states can be declared invalid under various grounds. Before the Vienna Convention came into force, a treaty could be declared invalid under customary international law. But, after the declaration of Vienna Convention, it was laid down under article 42 that the treaty can be declared invalid or the consent of the state to be bound by a treaty can be withdrawn only as per the provisions of Vienna convention made in this regard.

The grounds on which the treaty can be declared invalid are laid down in Vienna Convention. They are as follows –

- 1) Lack of proper authority of the representative.
- 2) Errors.
- 3) Fraud.
- 4) Corruption of the representative.
- 5) Coercion of a representative.
- 6) Coercion of a state.
- 7) Jus Cogens.

1) Lack of proper authority of the representatives:

The appointment of a Representative to represent the state for the conclusion of treaty is made by the state being represented by such representative. If the authority given to the representative has got some specific restriction, then such restriction must be notified to other states which are negotiating the terms of the treaty. If the representative fails to observe the restriction put upon his authority, then such omission to follow restriction can become the ground for making the treaty invalid. If the representative has not been given the power to assign the treaty, and the nature of treaty is such that it becomes binding when it is signed, in such a case, treaty may be declared invalid on the ground of lack of proper authority of the

representatives. Article 47 of the Vienna Convention provides for the ground for invalidating the treaty.

2) Errors:

If the treaty has an error according to article 48 of the Vienna Convention, then the treaty can be declared invalid on the ground of error. If the error in the treaty relates to any fact, which the state believes to exist at the time of conclusion of treaty, then the treaty can be declared invalid on the ground of error. The existence of the fact must form the basis of the consent of the state to rebound by it. The error must relate to the fact, but if the error is due to the conduct of the party who wants to declare the treaty invalid on the ground of error, then such error cannot be the ground for declaration of treaty invalid.

Example:

In case of a boundary treaty, and if it is concluded on the basis of a map, which later on found to be wrong, then the treaty can be declared invalid on the ground of error.

3) Fraud:

If a state is induced by another party to conclude the treaty by committing of fraud, then the treaty can be declared invalid on the ground of fraud as per article 49 of the Vienna Convention.

4) Corruption of the representative:

If the other party obtaining the consent of the state by corruption of the representative, either directly or indirectly, then the treaty can be declared invalid on the ground of corruption of the representative. The act of corruption should be an act which should have the substantial influence on the representative. Article 50 of Vienna convention provides for the invalidating of the treaty on the ground of corruption of the representative.

5) Coercion of the representative:

In the representative of the state is given threats which are detrimental to his well-being, and as such, coerced for giving the consent, then the treaty can be declared invalid on the ground of coercion of the representative. Article 51 of the Vienna convention provides for the invalidity of treaty on the ground of coercion of the representative of the state.

6) Coercion of the state:

If the state is given threats on such force as is used against the state which violates the principles of international law embodied in the Charter of United Nations and the state is thereby coerced to conclude a treaty, then such coercion of the state shall be a ground for invalidating the treaty. The nature of the coercion should not be either political or economical. Article 52 of the Vienna Convention provides for declaring the treaty invalid if the state is coerced by an illegal use of threat or force for concluding the treaties.

7) Jus Cogens:

A treaties in conflict with the general principles of international law can be declared invalid. Article 53 provides for the invalidity of treaty on the ground of Jus Cogens.

Thus, on all of the above grounds, a treaty can be declared invalid. As per Vienna Convention, a treaty can be declared void on the ground of coercion or conflict with Jus Cogens. An invalid treaty have no force of law.

Q. 19: State the grounds on which the treaty can be terminated.

Answer :

Termination of treaty means, an end to the operation of the treaty. In case of termination of treaty, the term "termination" have different meanings. In case of bilateral treaties, if one party withdraws from the treaty, then the treaty comes to an end and is said to be terminated. But, in case of multilateral treaties, if

one state withdraws from the treaty, the treaty does not terminate with respect to other parties to the treaties. The treaty shall exist as before, but it shall not have a binding effect on the state which has withdrawn from the treaty.

As per Vienna Convention, under article 3 of part V, the treaty can be terminated by different ways. They are as under:

- 1) By consent of the parties.
- 2) By denunciation.
- 3) By concluding another treaty.
- 4) By material breach.
- 5) By impossibility of performance.
- 6) As per the provisions of the treaty.
- 7) Due to emergence of Jus Cogens.
- 8) Due to fundamental changes in circumstances.

1) By consent of the parties:

As per article 54 (b) of the Vienna Convention, a treaty can be terminated with the consent of all the parties to the treaty. All the contracting states must be consulted for their consent before the treaty can be terminated.

2) By the denunciation:

Generally, a treaty has perpetual operation i.e. it is permanent. But some treaties are made only for a specific purpose. It can also be made for a particular period i.e. upto a particular date.

Under above circumstances, the treaty is terminated after the purpose is accomplished or the period of operation of treaty expires. The treaty in which the above condition of termination is not mentioned, can be terminated by either party to the treaty by denunciation. Where under the denunciation clauses provided by a treaty, a treaty can be terminated as per the provisions of the treaty. If the denunciation clause is absent in the treaty: then the treaty can be terminated as per Article 56 of Vienna Convention. Article 56 of Vienna convention, does not contain the clause relating to termination, denunciation or withdrawal. But, in such cases, the treaty can be terminated if,

- 1) Termination of treaty is implied by the nature of the treaty or
- 2) Intention of the parties provides for the denunciation or withdrawal.

As per Article 56 (2), a notice of intention of denunciation or withdrawal shall be given by the party to the treaty at least 12 month in advance.

Thus, in the above way, a treaty can be terminated by denunciation.

3) By concluding another treaty:

If treaty on the same subject matter is concluded between all the parties to the treaty, then the earlier treaty on the same subject matter is deemed to have been terminated. If the intention of the parties shows that the matter should be governed by the subsequent treaty, then the earlier treaty is deemed to have been terminated. A treaty is also deemed to have been terminated, if the provisions contained in the subsequent treaty are not compatible with the earlier treaty. As per Article 59 (1) (b) of Vienna Convention, if the provisions of the subsequent treaty are incompatible with the earlier treaty and the two treaties cannot be applied at the same time, then the earlier treaty is deemed to be have been terminated by the earlier treaty. Thus, a treaty can be terminated by concluding the subsequent treaty.

4) By material breach:

According to Article 60 the Vienna Convention, a treaty can be terminated if there is a material breach of the treaty by either parties to the treaty.

A party to the treaty, can breach the treaty on the following grounds –

- a) Natural material interest.
- b) Interest of defence for security.

c) Material interest which may be offensive for the power.

d) Internal political interest of the tutor.

In case of bilateral treaty, a breach by one of the party does not terminate the treaty. Such breach makes the other party eligible to terminate or suspend operation of treaty on the ground of breach of the treaty by the other party.

If the essential provisions of the treaty are breached, then other party can abrogate the treaty.

5) By impossibility of performance:

After a treaty is concluded between the states, certain development occurs within the state. If due to such developments, the performance of the treaty becomes impossible, then the treaty is deemed to be terminated. If the state which is a party to the treaty, is destroyed permanently, then the treaty is terminated automatically. Article 61 the Vienna Convention lays down the ground of impossibility of performance as a ground of termination of treaty.

6) As per the provisions of the Treaty:

As per the provisions of the treaty, as per Article 54 (a) of Vienna Convention a treaty can be concluded as per the provisions of the treaty. Thus a treaty can be terminated by complying with the provisions laid down in the treaty.

Example: If a treaty is made for a particular period, then the treaty is terminated after the expiry of the fixed period.

7) Due to emergence of Jus Cogens:

If a few norm which is peremptory in nature, arises in the general international law and the treaty is in conflict with the new norm then the treaty can be terminated. Article 64 of Vienna Convention provides for the termination of a treaty due to emergence of Jus Cogens.

8) Due to fundamental changes in circumstances:

If there is a change in the fundamental circumstances, then the treaty may be terminated due to such changes. Article 64 of Vienna Convention provides for the termination of treaty due to fundamental changes in the circumstances.

The above grounds for the termination treaty are based on rules of custom international law. The rules are incorporated under Vienna Convention.

Thus, a treaty can be terminated on above grounds.

Q. 20: Discuss briefly the various peaceful means of settlement of disputes.

OR

What are the various peaceful methods of settling the disputes ? Discuss the same.

OR

"The force of resolution of disputes is not legally of so late and obligation to settle disputes by peaceful means are already of these". Comment and briefly discuss the diplomatic matters of disputes resolution.

OR

Write short notes on :

a) Negotiation, Good Offices and Mediation.

b) Inquiry and Conciliation.

c) Arbitration.

Answer :

A dispute is said to arise under following circumstances –

- 1) When two persons differ on a point of fact.
- 2) When two persons differ on a point of law.
- 3) When two persons have conflicting legal views.
- 4) When there is conflict of interest between two persons.

Thus, a dispute between two persons can arise on either legal or political grounds. Legal dispute may arise on the grounds recognized by international court. Other disputes may be political disputes. International law provides for the settlement of legal disputes.

Settlements of legal dispute are of two types –

- 1) Amicable settlement of dispute. [also known as pacific means of settlement of dispute]; and
- 2) Compulsive settlement of dispute [also known as coercive means of settlement of dispute].

1) Amicable means [pacific means] of settlement of dispute:

This is a peaceful means of settlement of dispute. Peaceful means of settlement of dispute is one of the principle of United Nations recognized by the Charter of United Nations. This principle casts a duty on the state to settle the dispute by peaceful means. This principle has the status of customary rule of international law.

The peaceful means of settlement of disputes can be divided into two categories:

- 1) Extra-judicial peaceful means of settlements of dispute and
- 2) Judicial means of settlement of dispute

(I) Extra-judicial peaceful means of settlement of dispute:

When the states having dispute settle their dispute by an agreement, then such settlement of dispute is known as extra-judicial settlement of dispute. It is also known as diplomatic procedures or political means of settlement of dispute.

The extrajudicial peaceful settlement of dispute are as under –

- 1) Negotiation;
- 2) Good office and mediation;
- 3) Conciliation;
- 4) Inquiry;
- 5) By United Nations.

1) Negotiation:

When a dispute between two states is settled by discussion or by adjusting their differences that lead to the disputes, the procedure of settlement of dispute between disputant state is called as Negotiation. The dispute between two states can be negotiated either by the,

- i) Heads of the state, or
- ii) By their accredited representative, or
- iii) By a diplomatic agents.

Any correspondence made between the states is also included under negotiation. The change needed by the disputant state can be mutually agreed upon by negotiations. But, these are certain weaknesses in negotiation; sometimes the disputant state cannot ascertain exactly what are the facts that have given rise to a dispute. When the negotiation is between unequal parties i.e. between big state and small state. The big state is in a dominating position and the small state is subjected to the will of the big state. In case of negotiation, the small state is always under the influence of big state,

Examples:

- 1) In 1974, boundary dispute between India and Sri Lanka was settled by negotiations.
- 2) In 1977, the Farakka Barrage issue between India and Bangladesh was settled by negotiations.

The General Assembly on 8th December, 1998 by adopting a resolution, has issued guidelines to be followed by states during negotiations. They are –

- 1) Conduct of negotiation should be in good faith.
- 2) If the vital interest of the states are directly affected by the matters in questions, then the state should engage in negotiation in an appropriate manner.
- 3) The purpose and object of negotiation must be compatible with,
 - a) Principles and norms of international law.
 - b) Provision of charter of United Nations.
- 4) Negotiation should be conducted in the mutually agreed framework.
- 5) A constructive atmosphere should be maintained during renegotiation.
- 6) State should not do any act which may be detrimental to the progress of negotiation.
- 7) The state should conclude negotiation by focusing on the main objectives of negotiation.
- 8) In case the progress of negotiation is halted, the parties should try to work out the solution that will be mutually acceptable.

This is known as negotiation by way of extra-judicial means of settlement of a dispute.

2) Good office and mediation:

The assistance of third-party can be taken for settlement of dispute. When the method of negotiation fails to settle the dispute, 3rd party can be appointed for the settlement of dispute. The settlement of dispute by 3rd party can be done in two ways. They are –

- a) Mediation, and
- b) Good office.

a) Mediation:

In case of settlement of old dispute by mediation, 3rd party participates in the discussion with the states having dispute. It gives its own suggestions to settle the dispute. It is necessary that the mediator should be neutral and impartial. Mediator should meet the states, discuss the dispute with them, and should try to reach a compromise between them. If the settlement is reached between the states the mediator can sign on the Treaty of settlement reached between the states.

Example:

In 1966 in a dispute between India and Pakistan, Soviet premier Kosygm was a mediator. The dispute is settled by mediation and the Tashkent agreement was executed.

b) Good office:

To settle a dispute between two states by negotiation, a meeting is arranged by the third-party, this act of 3rd party is called “good office” or when the act of the 3rd party is such that a peaceful solution can be reached between the disputant states, then, the act of third-party is called good office. In case of settlement of dispute by good office, third-party does not participate in the meeting. No suggestions are given by third party to settle the dispute. A Good office of the 3rd party only brings the parties to dispute together; if the negotiation between them has failed on an earlier occasion. The only duty of 3rd party offering good office is to bring the parties to dispute together for the purpose of settling the dispute between them.

Example:

In 1947, to settle the dispute between Netherland and Republic of Indonesia, Security Council offered the good office.

3) Conciliation:

It is a process where a dispute is referred to a commission or a committee for the purpose of determining the basis of dispute between the states. After finding out the facts the commission or the committee has to submit the report together with the proposals for the settlement of dispute. But, the proposals made by the commission for settling the dispute are not binding upon the disputant states. The proposals of the

commission are not the judgment of any court or tribunal. The conciliation commission can be either permanent or ad-hoc. The composition, terms of formation and procedure of conciliation, commission, are determined by the treaties in which provision for settlement of dispute by conciliation is incorporated.

Example:

In 1956, Greco-Italian conciliation commission was appointed for the settlement of dispute.

Conciliation -

When a dispute is referred to a commission or a committee to investigate a basis of the dispute and to make a report containing proposals for settlements after finding out the facts, the process is known as conciliation. Thus, conciliation is the process of settling a dispute where endeavor is made to bring the disputant parties to an agreement and to make a report containing the proposals for a settlement. The proposals of a commission are not binding on the states because of its not being a judgement of any Court or Tribunal.

Conciliation differs from mediation, inquiry and also from an arbitration; while in conciliation, a dispute is referred to a body of persons for finding out the facts and for suggesting appropriate terms for its settlement; In mediation the third party participates in the meeting along with the disputant parties. The mediator does not ascertain the facts as in the case of conciliation; Conciliation differs from arbitration in the sense that the parties are free disregard the proposals of the commission, but the award of the arbitration is binding on the parties. It differs from Commission of Inquiry where the main object is to ascertain the facts. Suggestions or proposals are not given in Commission of Inquiry as in the case of conciliation. Conciliation Commission may be either permanent or ad-hoc. The procedures of and terms of their formation and their composition are determined by the bilateral and multilateral treaties which make the provisions for conciliation system for the settlement of disputes.

Conciliation Commissions were established by 1899 and 1907. Hague Convention for the Pacific Settlement of Dispute (Pact of Paris), 1928.

4) Inquiry:

For ascertaining the facts of the dispute, a commission is appointed which consists of impartial investigators. This process is called inquiry. The duty of the commission is only to ascertain the facts of the dispute. Inquiry is conducted for judicial purpose to determine the question of law or question of law and fact. Hague Convention, 1899, gave rise to the procedure of inquiry for settlement of disputes. Inquiry can be conducted by making a special agreement between the parties to the dispute.

Example:

In Nogger Bank incident, the process of inquiry was used.

When a commission is appointed consisting of impartial investigators of ascertaining the facts of the disputes, the process is called an inquiry. The function of the commission is confined only to the ascertainment of the fact. However, it is done from the judicial point of view, and it also clarifies question of law or mixed question of law and fact. The procedure of inquiry as a means for the settlement of disputes was evolved at the Hague Conference of 1899, so that states which were not willing to submit their disputes to an agreement by means of diplomacy might use the process of inquiry. Inquiry is constituted by a special agreement between parties to the dispute. The agreement defines the facts to be examined and the mode and time in which the commission is to be formed and the extent of the powers of the commission. The special agreement also determines if there is need, the place where the commission will situate, the language in which the commission will deliver. If the agreement does not provide the place for inquiry, it will be situated at Hague.

5) By United Nations:

One of the principles of the United Nations is the peaceful settlement of dispute. The General Assembly and Security Council have powers to settle the dispute by peaceful means.

General Assembly:

A matter to be settled by peaceful means can be referred to General Assembly. The matter can be brought

before General Assembly by,

- a) Member of United Nations.
- b) Security Council.
- c) Non-member of the United Nations.

a) Member of United Nations :

When the matter is brought before General Assembly, a discussion is made on the dispute. The General Assembly then makes the recommendation to the disputant parties, to take measures for the peaceful adjustment of the situation, which is likely to disturb the general welfare of the regulations among nations. No specific means of settlement of dispute is imposed on General Assembly. The General Assembly has a general power to settle the dispute by peaceful means.

b) Security Council:

The Security Council is responsible for the maintenance of international peace and security. The Security Council has powers to settle the dispute which are likely to endanger international peace and security. Security Council can settle the dispute by following ways,

- a) to all the parties to settle the dispute amicably.
- b) by investigating the dispute.
- c) by making recommendation to adopt appropriate procedure or methods for adjustment on issues relating to disputes.
- d) by recommending the terms of settlement of dispute

These are the Pacific peaceful extra-judicial means of settlement of dispute.

(II) Judicial means of settlement of dispute:

Under judicial means of settlement of disputes, the disputes are settled by a legal process, as per the international law, by a 3rd party who should be impartial. The outcome of the settlement of dispute by judicial means is binding on the disputant parties. Under judicial settlement, the disputes are settled by the International Tribunals. According to the rules of international law, International Court of Justice is an international tribunal.

Settlement of disputes by judicial modes are of two types –

- 1) Arbitration, and
- 2) Settlement of dispute, by International Court of Justice.

1) Arbitration:

As per international law commission attaining it is settlement of disputes between the states, in which an award is made on the basis of law, which shall be binding on the parties. Which has voluntarily undertaken the submission of dispute to arbitration.

Thus, a process in which a dispute is referred by the parties to dispute to a tribunal or to a body or persons, to determine the dispute legally so that the dispute can be settled between them, is called as arbitration. To submit a dispute to arbitration, consent of the parties should be obtained. Such consent can be obtained either before a dispute arose or after a dispute has arisen between the parties. The state can give consent by a specific agreement, after dispute has arisen. Such special agreement is known as compromise. The state can give consent to submit the dispute to arbitration before the dispute arises by concluding the general arbitration treaty. In such treaties, parties undertake to submit all or any class of disputes that may arise in future, to arbitration.

Example:

To refer the Kutch dispute to Arbitral Tribunal, special agreement was executed between India and Pakistan. The law and procedure to be applied by the arbitrators is laid down in the treaties of arbitration itself.

The decision i.e. the award passed by the arbitrators is binding on the parties to the dispute.

Thus, the dispute can be settled by the arbitration by referring the dispute to arbitrators.

2) Settlement of dispute by International Court of Justice:

Before the establishment of International Court of Justice, the disputes were settled by Permanent Court of Justice. With the dissolution of the League of Nations the permanent court of justice was dissolved. After the dissolution of permanent court of justice, international court of justice was established.

The international court of justice is permanent court which is governed by a statute. Before the dispute can be submitted to the international court of justice for settlement, the consent of the parties is required.

When the parties to dispute refer the dispute to international court of justice for settlement of dispute. The international court of justice adjudicate upon the dispute and the judgment is given by international court of justice. The judgment of the international court of justice is binding upon the parties to dispute.

Thus, the dispute can be settled by the international court of justice.

These are the peaceful means of settlement of disputes.

Q. 21 : What are the compulsive means of settlement of disputes ? Discuss.

OR

Write a short note on :

Pacific Blockade.

Answer :

A dispute is said to arise under following circumstances,

- 1) When two persons differ on a point of fact.
- 2) When two persons differ on a point of law.
- 3) When two persons has conflicting legal views.
- 4) When there is conflict of interest between two persons.

Thus, a dispute between two persons can arise on either legal or political grounds. Legal dispute may arise on the grounds recognized by international court. Other disputes may be political disputes. International law provides for the settlement of legal disputes.

Settlements of legal dispute are of two types :

- 1) Amicable settlement of dispute. [also known as Pacific means of settlement of disputes]; and
- 2) Compulsive settlement of dispute [also known as coercive means of settlement of disputes].

Compulsive or coercive means of settlement of dispute:

Non peaceful means of settlement of dispute are known as compulsive or coercive means of settlement of disputes. A pressure or force is applied on the states to settle the disputes.

Following are the compulsive or coercive means of settlement of disputes :

- 1) Retortion.
- 2) Reprisals.
- 3) Embargo.
- 4) Pacific Blockade.
- 5) Intervention.

1) Retortion:

Technically, the retaliation is called as Retortion. It applies the principle of tit-for-tat. In Retortion, a state does an act which is similar to the act which is done by the other state earlier. An act of state takes recourse to Retortion. To retaliate the act of other state. The acts done in response to Retortion are legal. Such acts of the Retortion are permitted under international law.

Example:

If a state restricts the entry of the Nationals of other states, then other states take the recourse to Retortion by imposing similar restriction on the entry of the Nationals of the former state.

The provision of the Charter of United Nations provides for the legitimate use of Retortion. While taking recourse to Retortion, the action which can disturb the international peace and security, cannot be taken legally. Such action shall be illegal. Thus, by resorting to Retortion, the dispute can be settled by compulsive means.

2) Reprisal:

If a state, for the purpose of securing the redress of a dispute, employs the coercive measures, it is known as reprisal. The purpose of taking recourse to reprisal is to compel the state which is indulging in delinquent activities, to stop such activities or to continue such activity or both.

i) If a state does an illegal act, and a dispute arises between the state, then it can be applied against it. But, if the state later on fulfils its obligation, reprisal should be discontinued.

ii) Reprisal must be applied to those who are perpetrators of violation. The rights of 3rd state must not be infringed.

iii) The scope of reprisal must be limited to the principle of proportionality. This principle was laid down by Naulila arbitration.

This is Reprisal of a coercive means of settlement of dispute.

3) Embargo:

The term embargo means, detention. In international law, the term embargo means, detention of ships in port. The term embargo originated in Spain. A state may apply embargo on its own ship or vessel or for the ship or vessel of other states.

Application of embargo to own vessel:

When a state detains its own ship, it is known as Civil embargo or Pacific embargo. Civil or Pacific embargo applied by the latter state, can take recourse to coercive measures against the delinquent state to settle the dispute.

Previously, under reprisals, only the property or persons were seized. By now reprisal includes bombardment, occupation of territories, seizure of ship, freezing of assets of citizens, taking away the property belonging to the citizen. Method of reprisal as a settlement of dispute can be applied both, against the state, as well as, citizens of the state. In reprisal a state can take any action.

To make an act of reprisal as legal, following conditions must be satisfied :

Reprisal has a time limit. If a state fails to fulfil any secondary obligation arising from state responsibility, then reprisal to suspend or terminate the trade and economic relations with other state. To exert a financial or economical pressure on other state, Civil embargo is applied.

Application of embargo vessel of other states:

If a state breaches an international law, and the ship of such a state is detained, then it is known as hostile embargo. The hostile embargo is applied for the purpose of compelling the other state to settle the dispute. Embargo can be applied under the authority of United Nations either individually or collectively. Application of embargo should not disturb international peace and security. If an embargo disturbs international peace and security, then such embargo is illegal. To apply an embargo against the delinquent state, an authority of Security Council is required.

In this way, disputes can be settled by embargo.

4) Pacific Blockade:

Blockade means, blocking the coast of a state using the warships or other methods by another state, to prevent the entry or exit of vessels of all the nations, for the purpose of putting economic and political pressure on that state. When such a Blockade is applied at the time of peace, then it is called as Pacific Blockade.

The essentials of Pacific Blockade are –

- a) A Blockade should be declared and notified.
- b) The Blockade must be an effective Blockade.

The purposes of Pacific Blockade are –

- a) To protect the independence of small state.
- b) To prevent the outbreak of war.
- c) To execute the treaties properly.
- d) To fulfil the obligation of the blocking state.

Blockade is a compulsive or coercive method of settlement of a dispute. By applying the Pacific Blockade, the trade and commerce of a state is suspended temporarily.

Example:

The first blockade was applied in 1827. Greece coast occupied by Turkish troops where Blockade by ships of British, French and Russia.

Powerful state uses Blockade for settling the disputes. At present if a pacific Blockade is applied individually, it is illegal. If the collective Blockade is applied with the permission of Security Council for settlement of dispute, it is legal.

Example:

In 1990, collective Blockade was applied against Iraq under the authority of Security Council.

5) Intervention:

A dispute can be settled by intervention. If one state intervenes in the affairs of the other state, it is an unlawful and unjustified method of settlement of dispute. Intervention can be of four types :

- a) Military;
- b) Subversive;
- c) Economic; or
- d) Diplomatic.

a) Military intervention: Use of Armed Forces results in military intervention. Military interventions are –

- i) Occupying the territory of another state;
- ii) Naval Blockade;
- iii) Seizure of assets of other state;
- iv) Embargo;
- v) Expulsion of foreign diplomats.

b) Subversive intervention: Activities by one state for fermenting its purposes, revolt or civil strike in other state is subversive intervention.

c) Economic intervention: Interfering with the trade and shipping and not giving access either by land or water is economic intervention.

d) Diplomatic intervention: Communication, the possible use of military or coercive measures are diplomatic intervention.

These are the compulsive or coercive means of settlement of disputes.

Q. 22 : Define Law of the Sea. Explain the terms “territorial waters”, “Contiguous Zone”, “continental shelf”, “exclusive economic zone”, “high seas”.

OR

Discuss the law relating to –

- a) Exclusive Economic Zone;
- b) Territorial Sea.

OR

Bring out the law regarding –

- a) **Continental Shelf;**
- b) **Exclusive Economic Zone.**

OR

Write short notes on :

- a) **Freedom of High Seas.**
- b) **The Exclusive Economic Zone.**

Answer :

Law of the Sea :

During the period of Grotius, laws relating to sea were evolved. These laws were observed by the state as the customary rules of international law.

According to customary international law, the sea was divided into 3 parts,

- 1) Territorial sea;
- 2) Contiguous zone; and
- 3) High sea.

This law was observed upto 19th century. With the beginning of 19th century due to development in science and technology, the law of sea was required to be changed.

In 1958, four conventions were adopted by Geneva Convention, they are –

- 1) Territorial sea and Contiguous zone;
- 2) Convention on the high seas;
- 3) Convention on the fishing;
- 4) Convention on the fishing and conservation of living resources; and the convention on the continental shelf.

But, the issue relating to breadth of the sea was still under dispute.

In 1982, the **Convention on the Law of Sea** was passed. Rules relating to the law of sea were contained in it. The Convention has 17 Parts, 9 Annexures and 320 Articles.

Territorial Sea/Territorial Waters –

Territorial Sea or Maritime belt was formerly called as the Territorial Waters. The Hague Codification Conference of 1930 had used the term "Territorial Sea". Sovereignty of the state is confined not only to the waters and land lying within its boundaries, it also extends to the part of the Sea which is adjacent to the coastal state. These waters are contained in a certain zone or belt which is called a "Marginal Zone" or "Marginal Belt" and the rights which are possessed by the coastal states are called as the "Maritime Rights". Extension of the sovereignty of the coastal states over the territorial Sea or Marginal Zone is based on the principle which can be summarized as "the land dominates the sea, ICJ 120 [*North Sea Continental Case* Parts (1969) p.51; *Aegean Sea Continental Shelf Case*, ICJ Reports (1978) p.36].

Territorial Sea may be stated as that part of the Sea which is adjacent to the coast and over which International Law permits the coastal states to exercise sovereignty subject only to a general right of innocent passage on the part of foreign shipping. The possession of this territory is neither optional nor depending upon the will of the state but compulsory. It is different from the internal waters lie within the boundaries of the state and they are used exclusively by the state itself. The 1958 Geneva Convention on Territorial Waters and Contiguous Zone provided that the coastal state exercises sovereignty not only over the territorial waters but also over air space above it. Article 2 of the UN Convention on the Law of the Sea, 1982 contains a similar provision.

Following is the law relating to different aspects of Sea :**1) Territorial Sea/Territorial Waters :**

Under customary international law, it was known as territorial waters. Territorial sea is that part of the sea, which is adjacent to the coast of the state. The coastal state exercises sovereignty over this part under international law. The sovereignty rights are subject to innocent passage for the foreign ship. A state exercises sovereignty not only on the land and waters within its boundary, but also upon that part of the sea which is adjacent to its coast. This part of the sea is called as Marginal Zone or Maritime Belt. The rights enjoyed by the coastal states on this belt is called as maritime rights. This sovereignty of the state over territorial sea or marginal Zone is based on the principle of will that dominates the sea. It is compulsory for the states to possess this territory. Possession is neither optional nor depends on the will of the state. The sovereignty of the coastal state over the territorial waters was recognized by the Geneva Convention on territorial sea and contiguous zone 1958 under Article 1.

According to Article 1 sovereignty of the state extends beyond the island territory and internal waters to a belt of sea which is adjacent to its coast. This belt is known as territorial sea. The Convention on the Law of Sea 1982, also recognized the sovereignty of coastal state upon the territorial sea is upto a certain breadth of sea. As per customary international law, the sovereignty over territorial sea extends upto 3 miles. This was the limit of sovereignty over territorial water of the sea. This was based on cannon shot rule. Since, the ball shot from the cannon could travel upto only 3 miles, hence, the limit of territorial sea was set upto 3 miles. This was not accepted by many states and different states claimed different breadth over territorial sea. But, the convention on law of sea 1982 fixed the breadth of territorial sea upto a limit of 12 nautical miles which should be measured from the baseline. The low water line that exists along the coast which is marked on charts officially recognized by the coastal state is the normal baseline from which the breath of the sea can be measured.

As per Article 15 if the coastal two states are opposite or adjacent to each other, then in such a case, the breath of the territorial sea is upto the median line. Every point on this medium line should be equidistant from the nearest points on the baseline, i.e. the time from which the breath of territorial sea of both the states is measured.

Rights of Coastal States over territorial sea :

As the coastal states exercise sovereignty over the territorial sea, certain rights are also exercised by such states. The coastal state exercises complete sovereignty over the territorial sea. But, certain right are exercised by other states also.

Sovereignty of the coastal state extend to the territorial sea, consequently, they have complete dominion over the part of the sea except that of the right of innocent passage and of transit by vessels of all nations.

a) **Rights of coastal state of territorial sea** – Coastal state have complete sovereignty over the territorial sea. But this sovereignty is subject to right of innocent passage and transit of vessels of all nations. The coastal states has exclusive right to extract the natural products from territorial sea.

Right to fisheries.

Right to extract resources of the sea-bed and the sub soil beneath the sea bed and right to appropriate natural products, such as, right to extract oil and natural gas, hydro carbons gravel and minerals, etc.

Right to appropriate for its own use living resources like sedentary fisheries and non-living resources like hydrocarbons, gravel and minerals.

Right to enact laws, rules and regulations with regard to transport and navigation over the territorial sea. The right of innocent passage exercised by the foreign ship over the territorial sea is subject to comply with these laws, rules and regulations. To prevent the non-innocent passage, the coastal state has a right to take necessary steps for its security, they can suspend the innocent passage of foreign vessels for a temporary period. But the coastal state cannot stop the innocent passage of foreign vessels in its territorial sea. It is the duty of coastal state to punish any dangerous navigation known to it in its territorial sea.

The coastal state has right to take the necessary steps to prevent passage which is not innocent. They may suspend temporarily in specified areas of its territorial sea, the innocent passage of foreign ships if suspension is essential for the protection and for security. If any warship does not comply with the laws and regulations of the coastal state concerning passage through the territorial sea, and disregards any request for compliance which is made, the coastal state may require the warship to leave its territorial sea immediately. The Flag state is to bear international responsibility for damage caused to the coastal state due to such non-compliance by the warship or due to breach by such vessel of the convention or other rules of International Law.

Rights of other states on territorial sea :

According to customary rules of international conventions, merchant vessels of all the states can navigate in the territorial sea. They have the right to innocent passage through territorial sea. This rule provided by the Convention on law of sea 1982. According to Article 17 of the Convention Law of Sea 1982, ships of all states whether they are coastal or land-locked, have right to innocent passage through the territorial sea. The coastal states cannot levy toll for mere passage of foreign ship through its territorial sea. It is unlawful on the part of coastal state to prevent the innocent passage of foreign ship at the times of peace through its territorial sea.

2) Contiguous Zone :

The part of the sea which is beyond and adjacent to the territorial water of the coastal state, is known as contiguous zone. The so coastal state does not have sovereignty over the contiguous zone. But, the coastal state has the Police and Revenue jurisdiction over the contiguous zone.

Under Para I Article 24, the right of coastal states over contagious zone were recognized by Geneva Convention on Contiguous Zone of 1958, accordingly – the coastal state has a right,

1) to prevent the infringement of its customs, fiscal, immigration or sanitary regulations within its territorial sea.

2) to punish the infringement of above regulations committed within its territorial sea.

This right of coastal state was recognized by the Convention on Law of Sea 1982. As per Para 2, Article 33 of the above-convention, the breath of the contagious zone should not extend beyond 24 nautical miles from the base-line from which the breadth of territorial sea is measured.

3) Continental Shelf :

For the purpose of exploitation of the natural resources available in the sea adjacent to the territorial sea, the concept of continental shelf was evolved. As per article 1 of the Convention on continental shelf of Geneva Convention 1958, the continental shelf is the sea bed and sub-soil of the sub-marine areas, which is adjacent to the coast of the state, but beyond the area of the territorial sea. The depth of continental shelf is 200 meters or beyond that limit upto the depth of the superjacent waters limits of the exploitation of the natural resources of the said areas.

According to above definition, the continental shelf can be defined in two ways –

a) By the depth of the sea;

b) By the capacity of exploitation of natural resources.

According to the depth of the sea, the continental shelf extends upto 200 meters of the sea.

Thus, exploitation can be done upto 200 meters, but if the exploitation is possible beyond 200 meters, then as per capacity of exploitation of natural resources the continental shelf extends upto that limit upto which exploitation is possible. The Convention on the Law of Sea, 1982 defined the term continental shelf under Para 1, Article 76. Accordingly, the continental shelf of a costal state is a sea-bed and sub-soil beyond the territorial sea of the state upto the natural prolongation of its land territory till the outer edge of the continental margin or upto a distance of 200 nautical miles from the base-line from which the

width of territorial sea is measured where the outer edge of the continental margin does not extend upto natural distance.

Rights of coastal state over continental shelf:

The state has no sovereignty over the continental shelf. But for the purpose of exploring and exploiting the natural resources of continental shelf, the sovereignty can be exercised by coastal state. This right of the coastal state over continental shelf must not interfere with navigation and other rights and freedom of other states.

Rights of other states in the continental shelf:

Other states have right to lay sands, cables and pipelines on the continental shelf. Before exercising such rights, other states should obtain permission of the coastal states. The coastal state has right to impose conditions for cables or pipelines while giving consent.

Exclusive Economic Zone:

Exclusive economic zone is an area upto 200 nautical miles from the coast base-line from which the breadth that the territorial sea is measured. Exclusive economic zone is adjacent to and beyond territorial sea. The outer limit of exclusive economic zone must be published by a chart by the coastal states. The difference between Exclusive economic zone is that the initial Exclusive economic zone is only 200 nautical miles, but the continental shelf extend beyond 200 nautical miles also.

Thus continental shelf covers the area of Exclusive economic zone. It can be said that, there can be continental shelf without Exclusive economic zone, but there cannot be Exclusive economic zone without continental shelf. The right of the coastal state over the Exclusive economic zone is similar to that of sea-bed and sub-soil of continental shelf.

The concept of Exclusive Economic Zone (EEZ) was initiated by Kenya in 1972 at the Geneva Session of the United Nations Committee on peaceful uses of the sea-bed and ocean-floor beyond the limits of National Jurisdiction. Later on, the concept of EEZ was thoroughly discussed and considered in different sessions of the Third Conference on the Law of the Sea.

The EEZ finally accepted in the Convention on the Law of the Sea of 1982. Since then it has become a generally accepted institution of the Law of the Sea. In *Tunisia v/s. Libya* (ICJ Reports 1982, p.18) it was stated that the concept of EEZ can be regarded as a part of Customary Law.

According to Article 55 of the UN Convention on the Law of the Sea, 1982, the EEZ is an area beyond and adjacent to the territorial Sea, subject to the specific legal regime established in Part V, under which the rights and jurisdiction of the coastal states and the rights and freedom of other states are governed by the relevant provisions of this Convention.

Rights of the coastal states over Exclusive Economic Zone:

The coastal states have sovereign rights to -

- 1) Explore and exploit natural resources.
- 2) Conserve and manage the natural resources.
- 3) Conserve and manage the living and non-living resources of the waters superjacent to the sea-bed and its sub-soil.
- 4) Produce the energy from water currents and winds and
- 5) Other activities.

The term other activities means, coastal state can use Exclusive economic zone for any economic uses.

Rights of other states over Exclusive Economic Zone:

The other states have freedom of navigational over flight in Exclusive economic zone. They can lay submarine cables and pipelines. They have freedom to use sea lawfully for the purposes associated with operation of ships, aircraft, submarine cables and pipelines. While exercising these rights, other states

must have due regard to the rights and duties of the coastal states. Other states can conduct marine scientific research to peaceful purpose.

5) High Seas:

Under customary rule of 7, high seas is that part of the sea which is not included in the territorial waters. Under Article 86 of the convention on law of sea, high seas means all that parts of the sea which is not included in,

- a) Exclusive economic zone.
- b) Territorial sea.
- c) Internal waters of a state.
- d) In the archipelagic waters of an archipelagic state.

Freedom of High Seas:

The high seas are open to both, coastal, and land locked states. The freedom of high seas must be exercised under the conditions laid down by the Convention on the law of Sea, 1982 and other rules of international law.

Freedom of high seas includes.

- 1) Freedom of navigation.
- 2) Freedom of over flight.
- 3) Freedom of total submarine cables and pipelines.
- 4) Freedom to construct artificial islands and other installations permitted under international law.
- 5) Freedom of fishing.
- 6) Freedom of scientific research.

The state should exercise this freedom of high seas with due respect to the interests of other states while exercising the freedom of high seas.

"Human Rights"

Q. 23 : What do you understand by "Human Rights" ? Discuss the evaluation of concept of Human Rights.

OR

What is the concept of "Human Rights" ? Evaluate the history and development of Human Rights.

Answer :

Meaning of Human Rights:

Human Rights are those rights which a man gets by his birth. In others words, Human Rights are the natural rights. These are the basic rights which are inalienable rights. (i. e. that cannot be given away) Right to life, right to liberty, right property are of paramount importance amongst others. Human Rights are those rights which an individual should possess against the state, because, of his membership of a human family.

Definition of Human Rights:

The term "Human Rights" has been defined under Section 2 (1) (d) of the Protection of Human Rights Act 1994 as under:

"Human Rights" mean, the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by the courts in India.

Evaluation of concept of Human Rights:

- 1) **Ancient Political thought :** The idea of protection of the rights of man was rooted in ancient political thoughts of Plato, Aristotle, and Cicero. These Greek and Roman philosophers advocated the concept of "natural rights". These philosophers are also instrumental in promoting and advocating universal standard of ethical conduct, which meant dealing with foreigners, citizens belonging to different countries in the same manner as dealing with the citizens of your own country and ethical standard, also included conducting of war in the civilized manner. In short, the concept of Human Rights was found in the Greeks-Roman philosophy.
- 2) **Magna Carta :** It is important stage in the evaluation and development of Human Rights. It was granted by King John of England to the English baron (i.e. noblemen of the lowest rank). There was heavy taxation burden which was created by the third crusade (i.e. Christian military expedition to recover Holy land from the Muslims). There was protection against the heavy taxes by the English baron and they demanded some concessions in their rights. The central idea or theme of Magna Carta was the protection of rights against the arbitrary acts by the King. The effect of Magna Carta was that, taxation was not to imposed without common council. Land and property could not be seized. Merchants were granted the right to travel within England freely. Judges had to know and respect Laws and there could not be an imprisonment without the trial. The introductions of these rights are related to Human Rights. According to Magna Carta, it was surfaced that the power of the King is not absolute. This concept was gradually developed and led to introduction of Bill of Rights in 1689.
- 3) **Virginia Declaration:** Virginia Declaration is also an important stage in the evaluation and development of Human Rights. This is known as the Virginia Declaration of Rights. According to this declaration, all men are by nature, equally free and independent and they possess certain inherent rights.

- 4) **French Declaration** : French Declaration is one more important stage in the evaluation and development of Human Rights. This declaration is known as French Declaration of the Rights of Citizen. This declaration insisted European Countries to make the use of the provision in their laws for the purpose of protecting Human Rights.
- 5) **Universal Declaration of Human Rights** : The movement of securing Human Rights continued and developed after the Second World War Universal Declaration of Human Rights 1948 was adopted by the General Assembly of the United Nations immediately after formation of United Nations. Article 3 of the Universal Declaration of Human Rights states that, everyone has a right to life, liberty and security of person. The preamble of the Declaration of Human Rights emphasised the protection of Human Rights by the rule of law.
- 6) **International Covenants**: In the evaluation and development of Human Rights, the international covenants also played an important role. The international covenant on (i) Economic Social and Cultural Rights and (ii) Civil and Political Rights were adopted by the General Assembly. The European Convention on Human Rights, African Charter on Human Rights and the American Convention on Human Rights added to the development of Human Rights.

Q. 24 : Define Human Rights. What are the kinds of Human Rights ? State the sources of International Human Rights Law.

Answer :

Human Rights are those rights which Human gets by his birth, in other words, Human Rights are natural rights. These are the basic rights which are inalienable (i.e. that cannot be given away) rights of which rights to life, right to liberty and property are of paramount importance. Human Rights are those rights which every individual must have as being member of Human Family.

Definition of Human Rights :

The Term "Human right" has been defined under Section 2 (1) (d) of the Protection of Human Rights Act, 1994 as under –

"Human rights" mean, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodying in the international covenants, and enforceable by the courts in India".

Kinds of Human Rights:

In fact, there cannot be different kinds of Human Rights, because, of the indivisibility and interdependence of the Human Rights. The Universal Declaration of Human Rights mentioned these human rights in different Articles of the Declaration. It did not attempt to categories these Human Rights enumerated by it in different Article of Universal Declaration of Human Rights, because of the fact that, Human Rights are equally important and inherent. After the Universal Declaration of Human Rights, the General Assembly passed the international covenants giving rise to the assertion that there are basically two kinds of Human Rights.

- (i) Civil and Political Rights; and
- (ii) Economic, Social and Cultural Rights.

(i) Civil and Political Rights –

These rights include –

- (i) Right to life, (ii) Right to personal liberty, (iii) Right to equality and non-discrimination, (iv) Right against self-discrimination, (v) Right against arbitrary arrest, (vi) Freedom of thought and expression, (vii) Freedom of association, (viii) Freedom of assembly, (ix) Freedom of movement (Residence), (x) Freedom of religion, (xi) Freedom from slavery forced labour, (xii) Right to privacy, (xiii) Right to marry

and family, (xiv) Right to property, (xv) Right to fair trial, (xvi) Right to participate in public affairs, (xvii) Right to nationality, (xviii) Right against torture, cruel inhuman or regarding treatment or punishment, (xix) Right to human dignity, (xx) Equal access to public services, (xxi) Right of minority, (xxii) Right of child.

(ii) Economic Social and Cultural Rights –

These rights include –

(i) Right to social security, (ii) Right to education, (iii) Right to work, (iv) Right to leisure, (v) Right to protection of moral and material interest, (vi) Right to protection of motherhood and childhood, (vii) Right to Trade Union, (viii) Right to strike, (ix) Right to maternity benefits, (x) Right to marriage and family, (xi) Right to cultural right, (xii) Right to minimum standard of living.

The Sources of International Human Rights Law:

The sources of International Human Rights Law are summarised as under:

- 1) **International Custom** : Due to widespread practice of Human Rights by the states which have been accepted by the states as binding, certain international human rights gained the status of international customary law. The Human Rights are the part of customary international law. These Human Rights have acquired the status of customary rule of international law, because, they have been included in the customary international law, and therefore, they are international custom or customary rule of international law and are the important source of International Human Right Law.
- 2) **International Treaties** : One of the important source of International Human Right Law is known in the form of International treaties. Treaties of all types, especially multilateral treaties relating to Human Right Law which are in existence having binding effects on the parties to such multilateral treaties. Universal Declaration of Human Rights in the form of United Nations Charter which is binding on every state.
- 3) **Judicial decision** : Another important source of International Human Right Law is the Judicial decisions at the International level given by International Tribunal, International Court of Justice. The rules pertaining to Human Rights derive from decisions given by various judicial bodies, International Court of Justice. In fact, the judicial decisions are the basis of determination of International Human Right Law.
- 4) **International documentation** : International documentation in the official nature is one of the important sources of International Human Rights Law. The United Nations and its related institutions, organizations and bodies produced such official documentation in the recent past and this documentation is on the Human Right issues. This has developed International Human Rights Law upto great extent. The United Nations and its organs have contributed to the development and growth of International Human Rights Law with official documentation on Human Rights, and therefore, International documentation is the source of International Human Right Law.
- 5) **International Covenants** : International covenants are the important sources of International Human Rights Law. In the evaluations and development of Human Rights, the International Covenants also played an important role. The International Covenants on (i) Civil and Political Rights and (ii) Economic Social and Cultural Rights were adopted by the General Assembly. The European Convention on Human Rights, African Charter on Human Rights and the American Convention of Human Rights are important sources of International Human Rights Law.

Q. 25 : “Right to a clean and wholesome environment is a basic Human Right”. Discuss.

Answer :

The Constitution of India is one of the few Constitutions in the world to provide for the care, protection and improvement of the environment and to impose a similar responsibility on its citizens to improve and

protect the natural environment and also to have compassion for other living creatures. The recognition of right to clean and wholesome environment is the basic Human Right.

Indian Constitution and the Right to Clean and wholesome environment as a basic Human Rights:

The Constitution of India absorbed the ideas of worldwide movement of Human Rights and the Constitution has provided for the protection of basic Human Rights to its citizens. Articles 21, 32 and the judiciary played an important role for emerging and recognising the right to clean and wholesome environment as the basic Human Right.

Article 21:

This Article relates to fundamental right to life and personal liberty. The judiciary through its creative interpretation and innovation, expanded the meaning and scope of this Article. This Right to life includes right to have healthy, clean environment. In other words, Right to life includes pollution free environment, without which, the Right to life will be meaningless. The Right to clean and wholesome environment was brought under the umbrella of Article 21 as the basic Human Right.

Stockholm Conference on Human environment:

In June 1972, the United Nations Conference on Human Environment was held at Stockholm. This Stockholm Conference placed the issue of Human Environment on the official agenda of international policy and law. India was one of the participants and signatories to this conference on Human Environment. In order to comply with the resolutions and principles of Stockholm Conference, the Government of India had taken the following steps in the direction of protection and promotion of right to clean and wholesome environment as a basic Human Right.

- (i) Constitution 42nd Amendment, Act;
- (ii) Water (Prevention and Control of Pollution) Act, 1974;
- (iii) Air (Prevention and Control of Pollution) Act, 1981;
- (iv) Environment Protection Act, 1986.

Article 48 A:

It imposes and contains Directive Principles and runs as under – “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

Article 51A (g):

It imposes a fundamental duty on every citizen. It runs as under – “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for every living creature”.

Role of Judiciary to ascertain Right to Clean and Wholesome Environment as a basic Human Right

∴ The Supreme Court under Article 32 and the High Court under Article 226, have succeeded in reducing environmental degradation and protecting the health, livelihood and life of the people. In short the judiciary has shown its ability to protect and promote the Right to clean and wholesome environment as a basic Human Right. The Right to clean and wholesome environment has elevated to the status of Fundamental Right. The credit for such elevation is to be given to the judiciary for evolving as environmental Jurisprudence relating to the fundamental issues of Human Rights.

In **Taj Hotel case**, the Supreme Court observed that, whenever the problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48 A and Article 51A (g) of the Constitution.

Case Laws:

Rural Litigation Entitlement Kendra, Dehradun v/s. State of U.P. AIR 1985 S.C. 652
(Doon Valley Case) :

This case is the first example or first indication of the right to clean and wholesome environment as the basic Human Right. In this case, a letter sent by NGO (Non-Government Organization) to the Supreme Court was treated as writ petition under Article 32 of the Constitution.

It was alleged in that letter that, the illegal lime stone mining in the Doon Valley was destroying the fragile eco-system in the area of Doon Valley. The Supreme Court held that, even if the lime stone queries have invested large sum of money and expanded considerable time and efforts, the right of people to live in healthy environment must be protected and safeguarded.

Damodar Rao v/s. Municipal Corporation AIR 1987 SC 171 :

The Supreme Court observed in this case that, the enjoyment of life and its fulfilment guaranteed by Article 21 of the Constitution includes the protection and prevention of nature's gift without which life cannot be enjoyed.

Protection and preservation of environment is not only the duty of citizen, but it is also an obligation of the state to strengthen the right to clean and wholesome environment as a basic Human Right.

Q. 26 : Write a critical essay on Human Rights and Terrorism. Has the definition of 'terrorist' changed after the 11th September, 2001 attack on the World Trade Centre in USA ?

Answer :

Human Rights are those rights which a man gets by his birth. In other words, Human Rights are the natural rights which are inalienable (i.e. that cannot be given away) rights of which right to life, right to liberty and property are of paramount importance. Human Rights are those rights which an individual should possess against a state, since he is a member of human family.

The origin of "Human Rights" can be traced to the very dawn of human civilization and the same are enshrined in the great religions of the world.

For example:

The Buddhist doctrine of non-violence in deed and thought, and the preaching of Vedas – "*Vasudheiva Kutumbakam*" ("creatures on the earth, is the one and whole family") that is, "the concept of universal family, brotherhood and fraternity" are all examples related to the recognition of Human Rights in one way or the other.

Terrorism and Gangsterism and Human Rights :

Unhealthy development of terrorism and gangsterism is one of the patent reasons for violation of human rights in the modern times. The terrorism and gangsterism are the offshoots of organised crime and this organised crime has an international effect.

Organised Crime (Terrorism and Gangsterism):

Organised Crime has posed a powerful and forceful challenge to the modern society. The incidents of organised crime of terrorism and gangsterism are growing at an alarming rate. The threats of terrorism and gangsterism have increased within and outside not only in our country, but also, in the countries of the West and far East, as well.

Definition of Organised Crime (Terrorism and Gangsterism) :

It is a group of people who work systematically to get certain desired result. According to Sutherland, such group of criminal are bound together by a common hostility towards law.

Effects of Terrorism on Human Rights :

The effects and consequences of terrorism on Human Rights are summarised as under :

- 1) **Threat to right to life :** Terrorism leads to blatant violation of

Human Rights. It threatens the fundamental right particularly the right to life of the victim, because, it brings sufferings and miseries to the human beings. Terrorism is sufficient to put the innocent people under threat to the rights and freedom of innocent people. Thus, Terrorism violates the Human Rights. The terrorists do not have love for Human Rights which are trampled upon by them with impunity.

- 2) **Terrorism is immoral and inhuman act :** Terrorism is an act against the Human Rights of innocent people including aged women, children who have nothing to do with the terrorism, but they are the victims of brutal act of terrorism. The terrorists have indulged in indiscriminate and random act of violence and such terror cannot be justified and it has posed a danger to basic human rights of the people.
- 3) **Terrorism is threat to concept of Human Rights :** Though, the Governments are existing or trying their level best in the difficult situation created by terrorism, to implement, maintain and safeguard the basic human rights in accordance with the international instruments, such as, declaration, covenants, conventions; the Human rights violation by terrorism have been very evident in the recent past taking into consideration the various acts of terrorism. Therefore, terrorism has become clear threat to the concept of Human Rights.
- 4) **Vienna World Conference on Human Rights and Terrorism :** The General Assembly adopted a resolution on Human Rights and Terrorism in 1993. This conference condemned all acts, methods and practices of terrorism, because, terrorism creates an environment which is instrumental in destroying the freedom from fear of the innocent people.

Recognition of Human Rights of Terrorists :

This is an important question as to whether the terrorists should be provided with Human Rights. The controversy has led to two views.

According to one view, the terrorist must be provided with Human Rights, since the Human Rights are inherent in all human beings. Human Rights are possessed by birth, and therefore, Human Rights of terrorists must be recognised irrespective of their acts. According to another view, the terrorists should not be provided with Human Rights and they must be punished on the ground of violation of Rights.

Attacks on the World Trade Centre on 11th September 2001: The terrorists attack on the World Trade Centre on 11th September was an act of international terrorism. Such terrorism which can be caused either with or without violence either during peacetime or during the time of armed conflict.

Purpose of Attack :

The main purpose of this attack is –

- (i) to create terror in the minds of the American people.
- (ii) to destroy the economy of America by causing destruction of the World Trade Centre.
- (iii) to transmit the message to the World that America cannot be considered itself to be safe.
- (iv) to show that supremacy of America can be broken by causing willful destruction of public and government property.

Aircraft Hijacking :

The attack on World Trade Centre is committed by aircraft hijacking. There are specific forms of terrorism and air hijacking is one of the forms of act of terrorism. There are also few conventions to suppress the acts of terrorism.

Change of definition of terrorist :

Before the attack on World Trade Centre, there were two views in existence viz. (i) whether terrorists should be provided with Human Rights or (ii) whether terrorists should not be provided with Human Rights. According to one view, since human rights are inherent in all human beings, they should be provided to terrorists, irrespective of their act.

According to another view Human Rights should not be provided to terrorists, because, terrorism is terrorism, and those who indulge in terrorist activities, violate the Human Rights of others, and therefore, they must be punished, and such terrorists, therefore, must lose their Human Rights.

As far as the punishment to terrorist is concerned, number of conventions with specific cases of terrorism such as, air hijacking, acts against internationally protected person, taking of Hostages, are adopted by the United Nations. These acts were against the Human Rights of others, and therefore, punishment was justified. But, where the act of terrorists does not affect the interest of the society, there was view, in such situation, that the terrorist should be treated differently by the state. It means that, the state is required to treat such act (which does not affect the interest of the society) as an ordinary crime without violation of their Human Rights. The attack on World Trade Centre on 11th September changed this view. Terrorist activities, irrespective whether such activities affect the interest of the society or not, the person who indulges in terrorist activities, must be apprehended and punished.

Q. 27 : Discuss the role of Human Rights Commission in India in protection of Human Rights.

OR

Write a critical note on the National Human Rights Commission.

Answer :

The Protection of Human Rights Act, 1994 brought into existence a National Human Rights Commission, and the State Commissions, in the States, and Human Rights Courts, in the districts.

The National Human Rights Commission has come into existence for the specific purpose i.e. for better protection of Human Rights. Even though, the National Human Rights Commission is simply an investigative and recommendatory body, it had made tremendous progress as the guardian of Human Rights.

Role of National Human Rights Commission:

The National Human Rights Commission played an important role in protection of Human Rights as under:

- 1) **Enquiry into innumerable cases of Human Rights violation:** The National Human Rights Commission made inquiry into innumerable complaints of Human Rights violations including investigation of very serious cases of violations of Human Rights. The National Human Rights Commission, therefore, submitted its reports to the Government and suggested measures to be taken to avoid and prevent the human rights violation. The inquiry made by NHRC may not be always impartial because the NHRC has not been provided with independent investigation agency. The inquiry made by NHRC into cases of violation of human rights with recommendation suggesting measures to be adopted to avoid and prevent violations of human rights is the remarkable contribution of the NHRC towards protection of human rights.
- 2) **Recommendation for grant of interim relief to the victim:** NHRC has contributed to the protection of Human Rights in India by recommending to the Government or to the appropriate authorities to grant interim relief to the victim of violation of Human Rights. The NHRC does not have power of prosecution, it can only recommend to the Government or to the appropriate authorities to initiate action. In other words, NHRC is a lion without teeth and nails. However, the establishment of violation of Human Rights by NHRC becomes an important basis for further intervention by the court. Recommendation to the Government or to the appropriate authorities to initiate action and to grant relief is also an important contribution of NHRC towards protection of Human Rights in India.

- 3) **Introduction of Human Rights subject:** Another important contribution by NHRC in protecting the HR in India, is introduction of Human Rights as a subject at University level. The NHRC has also been instrumental in emphasizing the need for the introduction of the Human Rights subject in the educational curriculum as a systematic study of the subject for the enlightenment of the students at the University level. The NHRC has been successful in providing Human Rights educations to the students at University level. There is also an attempt by NHRC to provide the police and jail authority, with Human Rights educations, because, in the actual practice it has been observed that, protection of Human Rights depends upon quality of the police and jail administrations. There are numbers of cases of violation of HR from these two organs in the form of custodial violence and inhuman treatment.
- 4) **Formation of Advisory Committee:** The NHRC has set up an Advisory Committee which is headed by the former Chief Justice of India, Justice A. M. Ahmadi. The main purpose of this advisory committee is to suggest revision to the Protection of Human Rights Act. The formation of Advisory Committee by the NHRC is another remarkable contribution of NHRC for the purpose of removing the deficiency and making it more effective for protection of Human Rights. The Advisory Committee by its report submitted in 1999, suggested for recommendation of financial autonomy, change in the Composition of NHRC by inclusion of two judicial and three non-judicial members of whom one should be women. Even though, the formation of such advisory committee may be helpful in improving the status of NHRC, but the protection of HR will be difficult task, because, the social, psychological, political, moral and economic reasons are the basis of denial of Human Rights to the great extent.

Q. 28 : What Human Rights are granted and protected by Part III and Part IV of the Constitution of India ?

Answer :

Fundamental Rights included in Part III of the Constitution of India are guaranteed to every citizen and are made enforceable at the initiation of any citizen in the event of its infringement or violation by any action of the state whether executive or legislature. In other words, any executive action or any law enacted by Central or State which violates or infringes fundamental rights, is declared as void by the Supreme Court or High Court. Human Rights are the basic rights which are inalienable rights. When these basic rights or natural rights, which are inherent in human beings, came to be guaranteed by the written Constitution, they are called as fundamental rights.

Types of Human Rights:

After the UDHR (Universal Declaration of Human Rights) the General Assembly passed the International Covenants giving rise to the assertion that there are basically two kinds of Human Rights –

- (i) Civil and Political Rights and
- (ii) Economic, Social and Cultural Rights.

Enumeration of Civil and Political Rights under the Constitution of India: The Civil and Political Rights are known as “Fundamental Rights” which are included in Part III of the Constitution of India.

The following Human Rights are guaranteed or protected by Part III of the Constitution of India –

- 1) Right to Equality and equal protection of law – Articles 14, 15 and 16.
- 2) Right to Freedom – [Article 19].
 - (i) freedom of speech and expression – Article 19 (a).
 - (ii) freedom to assemble peacefully and without arms – Article 19(b).
 - (iii) freedom to form association and union – Article 19 (c).
 - (iv) freedom to move freely throughout the territory of India – Article 19 (d).
 - (v) freedom to reside and settle in any part of territory of India – Article 19 (e).

(vi) freedom to practice any profession or carry on any occupation, trade or business – Article 19 (g).

- 3) Right to life and personal liberty – Articles 20, 21, 22.
- 4) Right against exploitation – Articles 23 and 24.
- 5) Right to freedom of religion – Articles 25, 26, 27 & 28.
- 6) Cultural and Educational Rights – Articles 29 and 30.
- 7) Right to Property (This right has been deleted by 44th Amendment and it has been re-enacted in Article 300A as constitutional right) – Article 31.
- 8) Right to Constitutional remedies – Article 32.

Enumeration of Economic, Social and Cultural Rights under the Constitution of India: Part IV of the Constitution of India deals with the Directive Principles of State Policy. Directive Principles are the guidelines to be followed by the State with a view to achieve the welfare of the people. Directive Principles are not justifiable or are not enforceable in the courts. It means, if the State fails to promote the Directive Principle, no action can be initiated against the failure of such state in the court of law.

The following Human Rights are granted and protected by Part IV of the Constitution of India –

- (i) Right to adequate means of livelihood [Article 39 (a)].
- (ii) Right against economic exploitation [Article 39 (c)].
- (iii) Right to equal pay for equal work for both, men, and women [Article 39 (d)].
- (iv) Right to work, to education and to public assistance in certain cases [Article 41].
- (v) Right to provision for just and human condition of work and maternity relief [Article 42].
- (vi) Living wages for workers [Article 43].
- (vii) Uniform Civil Code for the citizens [Article 44].
- (viii) Provision for free and compulsory education for children [Article 45].
- (ix) Promotion of education and economic interest of Scheduled Castes and Scheduled Tribes and other Weaker Section [Article 46].
- (x) Duty of the state to raise the level of nutrition and standard of living and to improve public health [Article 47].
- (xi) Organisation of agriculture and animal husbandry.
- (xii) Protection and improvement of environment and safeguarding of forests and wild life. [Article 48A].

Thus, the Constitution of India grants and protects the Human Rights with the help of Part III and Part IV of the Constitution of India.

Q. 29: The Supreme Court has done a tremendous job for the upliftment of women and children in India – Elucidate.

OR

Discuss Human Rights and Atrocities Against Women and the role of Supreme Court for the upliftment of women.

OR

Discuss Human Rights and Child Abuse and Child Labour and the role of Supreme Court for the upliftment of Children.

Answer:

Women by nature – Submissive and Slavish :

Women is known as the “Better half of man”, and despite comprising of half the population of the world, women are physically and sexually abused and exploited. Women face the denial of equal wages, equal

rights, equal governance and always experienced the subordinate status in the family. The male dominance had made women submissive and slavish.

Elimination of Discrimination Against Women :

For the purpose of elimination of all lands of discrimination against women, the General Assembly adopted a Declaration on the Elimination of Discrimination Against Women on 7th November 1967. The term discrimination against women means, distinction, restriction or exclusion which is instrumental in discriminating the women.

Legislation concerning women :

Some of the landmark legislations concerning women are summarised as under :

- a) Abolition of Sati Act (widow burning) 1829;
- b) Widow Re-marriage Act, 1856;
- c) Female Infanticide Act, 1870 (killing newborn female child);
- d) Inter-caste, Inter Community Marriage Act, 1872;
- e) Child Marriage Restraint Act, 1929;
- f) Special Marriage Act, 1954;
- g) Hindu Marriage Act, 1955;
- h) Suppression of Immoral Traffic in Women/Girls Act, 1956;
- i) Dowry Prohibition Act, 1961.

Rights of Women under the Constitution of India:

Article 14 i.e. Equality before Law and Equal protection of Law, Article 15 i.e. prohibition of discrimination on ground of religion, race, caste, sex or place of birth and Article 16 i.e. Equality of opportunity in matters of public employment of the Constitution of India grant fundamental Rights. Article 39 (d) of Part IV i.e. Directive Principles of State Policy also guarantee equal pay for equal work.

Role of judiciary in upliftment:

The Judiciary played an important role in upliftment of women in India. The Supreme Court by its various decisions, expanded and highlighted these constitutional guarantees :

- (i) The Supreme Court struck down a rule in Air India which made it compulsory for air-hostesses to resign when they get married. This rule was violative of the constitutional guarantee.
- (ii) The Supreme Court struck down rule, making senior women foreign service officers to resign from their posts when they get married. This rule was violative of the constitutional guarantee on the ground of gender discrimination.
- (iii) **Surinder Kumar v/s. State of Orissa :**
In this case, the wife was ill treated by her husband for not bringing sufficient dowry. One night, she was found engulfed in flames and was taken to hospital. A dying declaration was given by her in presence of two doctors that her husband poured kerosene on her and set fire. The Appellant was punished by the High Court, even though the Dying declaration was not corroborated. The Supreme Court held in this case that, even an uncorroborated dying declaration is adequate or sufficient enough to procure the conviction in such case and the Supreme Court confirmed the punishment of life imprisonment awarded to the appellant.
- (iv) **Vazirchand v/s. State of Haryana :**
In this case, the young daughter-in-law, while making tea was badly burnt at 6.00 a.m., and she was dead by 11 a.m. She was being harassed by her husband and his relatives for bringing insufficient dowry. There was purposeful delay in taking her to the hospital when she was badly burnt, her cries were drowned by raising the volume of the radio. Even the neighbours were prevented from entering the house. In this case, the Supreme Court rejected the plea of the Appellant of suicide and confirmed the punishment.

Child Labour and Child Abuse :

Child Labour :

Child Labour problem in India is of immense magnitude and has acquired a serious momentum. The fundamental rights of the children guaranteed under Article 24 of the Constitution of India are being grossly infringed or violated. The involvement of children in labour is so wide that the numbers of children involved in the labour is unbelievable and unimaginable. Every product we use has a child labour behind it. When we sit on a carpet, light a lamp, smoke a bidi, burst fire crackers in our festival, purchase any domestic articles, the house we use for dwelling constructed by bricks, cement, etc. has sweat and tears of children, it is unfortunate to know that all these products have child labour behind it. Illiteracy, economic condition and social status of the children, make them victim.

Child Abuse :

The term "child abuse" means mistreatment of a child by parent or another adult. It is difficult to give a precise definition of child abuse in the absence of any standard definition of child abuse. Child abuse may refer to life threatening physical violence which includes severe beating. The instances of child abuse occur in the year are innumerable which are not noticed or not reported.

Causes of Child Abuse:

The causes of child abuse are summarised as under:

- (i) Proximity of Individual with adverse emotional problem: It is important cause, or reason of child abuse. It is believed by many social scientists that people with adverse emotional problems, abuse the children. The Proximity of such individuals such as uncle, family friend, distant relatives, and neighbours have opportunity to abuse the children.
- (ii) Concept of physical punishment: It is one of the reasons for child abuse. The society has developed a concept of physical punishment to improve the children or as a method of changing the behaviour of children. The adults who hurt them to correct never realise the injuries sustained by the children mentally and physically.
- (iii) Existence of stress : One more reasons for child abuse is the existence of stress. Parents who are not employed, isolated are naturally under a great stress and such persons are more likely to abuse their children. If the child is handicapped, then, in such situation, the handicapped children are more likely to be abused comparatively than other children.

Sexual Abuse :

It is one of the major causes or reasons of child abuse. The proximity of individual around children, indulges in such abuse. Therefore, children should be taken into confidence to discuss anything that bothers them with the trustworthy person. They should also be warned not to let people touch them in ways that makes them feel uncomfortable.

Role of Supreme Court in upliftment of Child :

The role of Supreme Court in upliftment of child is commendable in expanding Human Rights with the use of Article 21 of the constitution.

- (i) The Supreme Court acted *suo-moto* when news about an unfortunate accident in one of the Sivakashi Cracker Factories appeared in the newspapers. In that factory, almost all workers were children, and due to accident, the death toll was 39. The Supreme Court took a *suo-moto* cognizance and directed the Tamil Nadu Government regarding payment of compensation to the accident victim.
- (ii) The Supreme Court also held the manufacturing process of matches and fire-works is hazardous which is instrumental for fatal accident, and therefore, given certain directions as to how the quality of life of children employed therein could be improved.

- (iii) The Supreme Court in *M. C. Mehta v/s. Tamil Nadu* observed that, the spirit of Constitution of India is that, children should be subjected to free and compulsory education till they complete 14 years of their age and they should not be employed in the factories in such tender age.

Q. 30 : Establish the links between the environment and Human Rights. With relevant cases show how the quality of life is included in the right to life as guaranteed in Article 21 of the Constitution of India.

Answer :

The fact that there is a link between environments and Human Rights which can be established by the following points –

Constitutional provisions :

The Constitution of India is one of the few Constitutions of the world to provide for care, protection and improvement of the environment and to impose a similar responsibility on its citizens to improve and protect the natural environment and also to have compassion for other living creatures. The recognition of link between the environment and Human Rights is the unique feature of the Constitution, because, the right to clean and wholesome environment is the basic Human Right.

Article 48 A :

Article 48 A was inserted due to 42nd Constitution Amendment. It imposes and contains a Directive Principles and runs as under :

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of country”.

This Article imposes a duty for the protection and preservation of environment which is the basic of Human Right.

Article 51A (g) : It imposes a fundamental duty on every citizen for the improvement and protection and preservation of environment which is the basis of Human Right. It runs as under “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for every living creatures”.

Damodar Rao v/s. Municipal Corporation AIR 1987 SC 171 –

The Supreme Court observed in this case that, the enjoyment of life and its fulfilment guaranteed by Article 21 of the Constitution of India includes the protection and prevention of nature's gift without which life cannot be enjoyed. Therefore, the Human Rights will be meaningless in the absence of clean and wholesome environment.

Wider Implication of Article 21 of the Constitution :

The role of Supreme Court in expanding the dimension of Article 21, i. e. Right to Life and Personal Liberty has been of paramount importance. Article 21 is a basic Human Right. The Article 21 of the Constitution of India guarantees right to life and personal liberty. The Article 21 runs as under “No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

The expression “life” does not mean animal existence: Right to life guaranteed under Article 21 of the Constitution has certain positive aspects, because, the word “life” does not mean mere animal existence but it includes all the necessary enjoyments which the individual has a basic Human Rights. The fulfillment of all such condition to make the life of the individual enjoyable and comfortable.

A. K. Gopalan v/s. State of Madras AIR 1950 SC 27 –

In this case, the Supreme Court had taken a narrow view about Article 21 that Article 21 was a separate and independent Article; and it was observed by the Supreme Court that, the law dealing with the expression life and personal liberty does not require to satisfy the test of reasonable restriction satisfied under Article 19. Now the Supreme Court for widening the scope of Article 21 i. e. Right to life and personal liberty and the Supreme Court has brought under the umbrella of Article 21 various rights. In other words, the rights which were not fundamental rights were brought by the Supreme Court under and within the meaning of Article 21 i. e. Right to life and personal liberty by its creative and innovative Human Rights jurisprudence.

Right to clean and wholesome environment as a part of Article 21:

Right to clean and wholesome environment held to be as a part of Article 21 i.e. Right to life and personal liberty. Because without clean and wholesome environment, the Right to life is meaningless. Therefore, right to clean and wholesome environment is a basic Human Right.

Case Law:**1) Rural Litigation Entitlement Kendra Dehradun v/s. State of U.P. AIR, 1985, SC 652 (Doon Valley Case) : –**

In this case, it was held that, the right to clean and wholesome environment is the basic Human Right, which comes under the purview of Article 21 i.e. Right to life. In this case the Supreme Court emphasised that, the Right of people to live in a healthy environment must be protected and safeguarded.

2) "Oleum Gas Leak Case" : M. C. Mehta v/s. Union of India AIR, 1987, S. C. 965 –

In this case, the Supreme Court extended the scope of the right to life and also observed that, the state had the power to impose restriction on carrying on any hazardous industrial activity for the purpose of protection of the right of the people to live in clean, healthy and safe environment. The Supreme Court emphasized that, the right to life contained in Article 21 of the Constitution is so wide that it takes within its ambit the right to clean and wholesome environment.

Right to privacy as a part of Right to life (Article 21) :

Right to life guaranteed under Article 21 also includes Right to privacy within its meaning.

Case Law :**1) Kharak Singh v/s. State of U.P., AIR 1963 SC 1295 –**

In this case, the movement of the petitioner was under surveillance (a careful watch) since petitioner's name was recorded in the History Sheet maintained by the police. There were "domiciliary visits" by the police to ascertain the presence of the petitioner at night-time. The Supreme Court held that, night visits by the police are violative of Right to privacy, and it is therefore, violative of Right to life.

2) State of Maharashtra v/s. Madhukar Narayan Mardikar, AIR 1991 SC 207 –

In this case the Supreme Court recognised "right to privacy" as a part of Article 21 i.e. Right to life. The delinquent police officer was dismissed for visiting the hutment of one Banubai, a woman of easy virtue, in police uniform and had tried to ravish her. The Supreme Court held that, even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Therefore, she is equally entitled to the protection of law as the right to privacy is the part of right to life.

Right to speedy trial, free legal aid as part of right to life (Article 21) :

It has also been held by the Supreme Court that, right to speedy and expeditious criminal trial and right to legal aid is the part of right to life.

Case Law :**1) Miss Smita Ambalal Patil v/s. Asst. Director of Enforcement –**

In this criminal Write Petition, a young college going girl was arrested in August 1974 with several others. The bail was granted to her, but the trial of the case did not commence until December, 1991. Despite several applications by the Petitioner, the trial could not be commenced. She even requested the court to take her into custody by cancelling the bail since the petitioner could not tolerate the torture of a pending trial indefinitely. The High Court after considering the abnormal delay in this case, concluded that a right to speedy trial forming the part of right to life. The Supreme Court confirmed the observation and emphasized that the right to speedy trial and legal aid is the part of right to life.

Equal justice and free legal aid is the part of right to life (Article 21) :

The Supreme Court brought the above directive principle under Article 39 (a) i.e. equal justice and free legal aid under the purview and umbrella of right to life.

Case Law :***Sheela Barse v/s. State of Maharashtra, AIR, 1983,S.C.,378 –***

In this case, a letter addressed by Sheela Barse a journalist, regarding complaint of custodial violence to women prisoners in the police lock up in city of Mumbai. The Court authorised Dr. (Miss) Desai, Director of College of Social Work, Nirmala Niketan, Mumbai to visit the Mumbai Central Prison and submit the report after interviewing the women prisoners. Dr. (Miss) Desai submitted the plight of women prisoners in jails. The Court observed that, there was no adequate arrangement for providing legal assistance. Since free legal aid is the part of right of life, there is a great violation of Article 21 and issued direction to the Inspector General of Prison of Maharashtra.

Q. 31 : What is Judicial Process ?**Answer :**

Judicial process has not been defined, however, judicial process can be explained as a continuous sequence and series of acts by the judiciary in the development of law. Thus, judicial process is an expression of wide import, it covers the entire process of judicial justice and the norms governing the exercise of judicial power.

Judicial Process includes –

- a) Development of law;
- b) Growth and change in law.

Judicial process refers to the judicial power. Judicial power is usually concerned with the adjudication of disputes between man and the State. Sometimes the exercise of this power depends upon the temperament, upbringing, social background, learning of the judge, etc.

Judicial process functions in regard to diverse disputes, such as –

- 1) Decision on Constitutional provisions;
- 2) Interpretation of Statutes;
- 3) Judicial Review of Law and Government Action;
- 4) Judicial Review of lower Judiciary and Administrative Tribunals; etc.

The judicial process involved in maintaining democracy is almost exercised through Writs. In his lecture on Judicial Process, Chief Justice Hidaytullah has observed that “The preparative Writs do more than establish rule of law..... By their decisions, Judges become the architects of society”.

Society needs and demands laws and regulations on particular subject or matter. Making such laws and regulations, becomes part of judicial process, e.g. Vishakha's Case. The Laws are made by the Legislature. They are implemented by the Judiciary. In case, where there are n laws or if the laws are silent on certain matter, then it is a Judiciary i.e. Judges to express their opinion by laying down the rule

of law in that matter. Such opinion or rule of law laid down by the highest judiciary i.e. the Supreme Court, is binding on all the Courts in India. It becomes a Precedent which is followed by all the Courts in India.

Role played by Judges in judicial process –

A Judge is looked upon as an embodiment of Justice. Judge is often addressed as “Justice”. People approach the Court for seeking justice. They feel frustrated if justice is denied to them. Sometimes, the laws made by the Legislature are opposed to the principles of natural justice or violative of the fundamental rights of the citizens. In such a situation, although it is not open for the Judges to question the validity of law, on such grounds, the Judges can certainly make efforts to do justice by moulding the law within the permissible limits as recognized by law. This function of the Judges is described as judicial process or judicial activism. Maitland has rightly pointed out that “..... the respect of the Judge is high and his task extensive; he is not expected to behave like a machine but a thoughtful and skilled artist, who processes Law in his anxiety to do Justice”.

The Judge must shape his judgement in obedience of fundamental interests of the society to ensure peace and security which is the chief function of Law, and therefore, the reaction of community to a particular decision cannot be ignored, e.g. Shah Banoo's Case.

The duty of the Judge is to decide the case to the best of his ability and give justice on the basis of some principles formulated by him. This is no doubt, a kind of legislation, which can be described as “judicial legislation”. It is said that “Judges legislate only between gaps and fills, the open space to fill the gap”. But this power to legislate, though subordinate, has to be exercised with great care and passion.

Q. 32 : State constitution/composition of the National Human Rights Commission and also state the functions and powers of the N.H.R.C.

OR

Write a short note on :

National Human Rights Commission.

Answer :

Constitution of N.H.R.C. :

- 1) National Human Right Commission is constituted by the Central Government to exercise the powers and perform the functions assigned to it under the Protection of Human Right Act, 1993.
- 2) The NHRC shall consist of –
 - i). A Chairperson who is or been a Chief Justice of Supreme Court.
 - ii) One Member who is has been a Judge of the Supreme Court.
 - iii) One Member who is or has been the Chief Justice of High Court.
 - iv) Two Members with the knowledge and experience of Human Rights.
- 3) The Chairperson of the National Commission for Minorities, the Chairperson of the National Commission for Scheduled Castes and Scheduled Tribes and Chairperson for National Commission for Women, are the members for certain specific functions.
- 4) There will be Secretary General who is the Chief Executive Officer of the NHRC.
- 5) The NHRC shall have its headquarters at Delhi. The NHRC is authorised to establish its offices at other places of India subject to the approval of the Central Government.

Appointment of Chairperson and Members :

The appointments of the Chairperson of NHRC and other members of NHRC are made by the President on the basis of the recommendation of Selection Committee consisting of –

- i) The Prime Minister, as a Chairperson.
- ii) The Speaker of the Lok-Sabha (House of People), as a Member.
- iii) The Central Cabinet Minister of Home Affairs, as a Member.
- iv) The Leader of the Opposition in the House of People, as a Member.
- v) The Leader of the Opposition in the Council of Union, as a Member.
- vi) The Deputy Chairman of the Council of Union, as a Member.

Removal of Chairperson and Members :

The Chairperson or any other Member of NHRC is removed from the office by the order of President on the ground of proved misbehaviour or incapacity on an enquiry held by the Supreme Court on reference made by the President.

Term of Office of Chairperson and Members :

- a) The term of office in case of Chairperson of NHRC is of five years from the date of his appointment or until he attains the age of seventy years whichever is earlier.
- b) The term of office in case of Members is five years from the date of his appointment and such member is entitled for re-appointment for another term of five years.
- c) Once the member or Chairperson is ceased to be member or Chairperson, is not eligible for further appointment in the Central or State Government.

Salary and Allowances of Chairperson and Members :

The salaries and the Allowances are payable to the Chairperson and Members as may be prescribed.

Functions of the NHRC :

The Commission performs the following functions –

- i) to enquire *suo moto* or on a petition of violation of Human Right.
- ii) to visit the jails of State Governments to study the living conditions of the prisoners with a view to ensure protection of Human Rights.
- iii) to review the acts of terrorism that prevents the enjoyment of Human Rights.
- iv) to review the safeguards provided by the Constitution or any other law for the protection of Human Rights.
- v) to recommend the appropriate remedial measures for protection of Human Rights.
- vi) to encourage the efforts of NGOs and other institution on similar footing in the protection of Human Rights.
- vii) to undertake and promote the research work for the protection of Human Rights.
- viii) to spread Human Rights education and awareness regarding safeguards available for the protection of Human Rights.
- ix) to study International treaties and other instruments concerning Human Rights and make recommendations for appropriate remedial measures for their effective implementation.

Powers of the N.H.R.C. :

1) The Chairperson of the Commission has the same powers, as vested the Civil Court under the Civil Procedure Code 1908 in respect of the following matters –

- a) Enforcing the attendance of any person and examining him on Oath.
- b) Compelling the production of documents and material objects.
- c) Issuing commission for the examination of the witnesses.
- d) In respect of such other matters as may be specified.

The Commission has a power to require any person to furnish information on the matters which is useful in the opinion of the Commission has a power to require any person to furnish information on the matters which is useful in the opinion of the Commission with regard to enquiry being made in the complaint of violation of Human Rights.

The Commission has a power to enter any building or place in connection with the enquiry into the complaint of violation of Human Rights.

Any proceeding before the Commission is deemed to be "judicial proceeding" within the meaning of Section 193 and 228 of Indian Penal Code.

Investigation: For the purpose of conducting investigation into the complaint of violation of Human Rights, the Commission is authorised to utilize the services of any officer or any investigating agency of the Central Government or State Government with the approval of the Central Government or State Government, as the case may be.

Submission of Annual and Special Reports :

The Commission is required to submit its Annual Report to the Central Government and State Government, as the case may be.

The Central Government and the State Government, as the case may be, required to lay before each House of the Parliament or the State legislature such annual report or special report.

Q. 33 : State constitution/composition of the State Human Rights Commission and also state the functions and powers of the S.H.R.C.

OR

Write short note on :

State Human Rights Commission.

Answer :

Constitution of S.H.R.C. :

- 1) The State Human Rights Commission is constituted by the State Government to exercise the powers and perform functions assigned to it under the Protection of Human Rights Act, 1993.
- 2) The State Human Rights Commission shall consist of –
 - i) A Chairperson who has been a Chief Justice of High Court.
 - ii) One Member who is or has been a Judge of High Court.
 - iii) One Member who is or has been a District Judge of the State.
 - iv) Two Members with the knowledge and experience of Human Rights.
- 3) There will be a Secretary who is the chief executive officer of the Commission.
- 4) The State Human Rights Commission shall have its headquarters at place notified by the State.

Appointment of Chairperson and Members :

The appointment of chairperson and other members are made by the Governor on the basis of the recommendation of a Selection Committee consisting of –

- i) The Chief Minister, as a Chairperson.
- ii) The Speaker of the Legislative Assembly, as a Member.
- iii) The State Cabinet Minister of Home Affairs, as a Member.
- iv) The leader of opposition in the Legislative Assembly, as a Member.

Removal of Chairperson and Members :

- 1) The Chairperson or any other Members of State Human Rights Commission is removed from the office by the order of the President on the ground of proved misbehaviour or incapacity consequent upon an enquiry held by the Supreme Court or a reference made by the President.
- 2) The Chairperson or any Member of the Commission may be removed by the President, by an order if the Chairperson or any other Member –
 - i) If adjudged as insolvent, or
 - ii) If he is unfit to be continued in the office due to infirmity of mind or body, or
 - iii) If he is declared of unsound mind by the Court of competent jurisdiction, or
 - iv) If he is convicted and sentenced to imprisonment for an offence of moral turpitude.
 - v) If he engages in any paid employment during his term of office.

Term of office of Chairperson and Members :

- a) The term of office in case of Chairperson is of five years from the date of appointment or until he reaches the age of seventy years, whichever is earlier.
- b) The term of office in case of Member is five years from the date of his appointment and such member is entitled for re-appointment for another term of five years.
- c) Once the Chairperson or Member is ceased to be Member or Chairperson, is not eligible for further appointment in Central or State Government.

Salary and Allowances of Chairperson and Members :

The salaries and allowances payable to the Chairperson and Members are as may be prescribed.

Functions of the S.H.R.C. :

(The similar functions as performed by the NHRC as written in the short note above on NHRC).

Following are the functions of the SHRC –

- i) to enquire *suo moto* or on a petition of violation of Human Rights.
- ii) to visit the jail of State Government to study the living conditions of the prisoners with a view to ensure protection of Human Rights.
- iii) to review the acts of terrorism that prevents the enjoyment of Human Rights.
- iv) to review the safeguards provided by the Constitution or any other law for the protection of Human Rights.
- v) to recommend the appropriate remedial measures for protection of Human Rights.
- vi) to encourage the efforts of NGOs and other institutions on similar footing in the protection of Human Rights.
- vii) to undertake and promote the research work for the protection of Human Rights.
- viii) to spread Human Rights education and awareness regarding safeguards available for the protection of Human Rights.
- ix) to study International treaties and other instruments concerning Human Rights and make recommendations for appropriate remedial measures for their effective implementation.

Powers of S.H.R.C. :

(Similar powers as exercised by the NHRC).

- 1) The Chairperson of the Commission has the same powers, as vested in the Civil Court under the Civil Procedure Code, 1908 in respect of the following matters –

- a) Enforcing the attendance of any person and examining him on oath.
- b) Compelling the production of documents and material objects.
- c) Issuing commission for the examination of the witnesses.
- d) In respect of such other matters, as may be specified.

- 2) The Commission has a power to require any person to furnish information on the matters which is useful in the opinion of the Commission with regard to enquiry being made in the complaint of violation of Human Rights.

- 3) The Commission has a power to enter any building or place in connection with the enquiry into the complaint of violation of Human Rights.
- 4) Any proceeding before the Commission is deemed to be “judicial proceeding” within the meaning of Sections 193 and 228 of Indian Penal Code.
- 5) Investigation: The similar write-up in short note on NHRC.
For the purpose of conducting investigation into the complaint of violation of Human Rights, the Commission is authorised to utilize the services of any officer or any investigating agency of the Central Government or State Government with the approval of the Central Government or State Government, as the case may be.
- 6) Submission of Annual and Special Report:
 - i) The commission is required to submit its Annual or Special report to the State Government.
 - ii) The State Government is required to lay before the State legislature such annual and special report.

Human Rights Courts :

- i) The Protection of Human Rights Act has made provision for Human Rights Courts.
- ii) The main purpose of providing speedy and expeditious trial of offences arising from the complaints of violation of Human Rights.
- iii) The State Government after obtaining the approval for such Court from the Chief Justice, may give notification specifying for each district, a Court of Sessions to be the Human Rights Court to deal with the offences of violation of Human Rights.
- iv) Every such Human Rights Court shall have a Public Prosecutor who will be notified by the State Government.
- v) The Public Prosecutor or any Advocate so appointed, should have experience of not less than seven years for conducting cases in such Court.

Grants by the State Government :

The State Government shall pay to the State Commission by way of grants of such sums of money as the State Government may think fit for being utilised for the purposes of this Act (i.e. Human Rights Act, 1993).

The State Commission may spend such sums as it thinks fit for performing its functions.

Q. 34 : Write a short note on : Vulnerable Groups and Human Rights.

Answer :

Vulnerable Groups and Human Rights :

Certain groups of Human Rights are basically vulnerable. In other words, certain groups of human beings are always open to attack. They face such attack either by name or because of deeply rooted customs. They are often victims of violation of Human Rights by dominant section of the society.

The vulnerable groups of human beings include following persons :

- 1) Women; 2) Children; 3) Migrant Persons/Workers; 4) Refugees; and 5) Disabled and aged persons.

Women :

- * Discrimination against women.
- * Declaration on the Elimination of Discrimination Against Women.
- * Conferences on Women :

- i) Mexico City Conference, 1975;
- ii) Copenhagen Conference, 1980;
- iii) Nairobi Conference, 1985;
- iv) Beijing Conference, 1995.

* Objects of the Conference:

- i) Women Rights are Human Rights.
- ii) Consideration of violation of women's Human Rights.
- iii) To eradicate the conflict which arises due to certain customary practices cultural prejudices and religious excessiveness.

* The effect the conference is not effective:

- i) Because, women are still regarded as inferior.
- ii) Varying degrees are adopted.

Children:

* UDHR Article 25 stipulates that the childhood is entitled to special care and assistance.

* Declaration on Rights of Child adopted by the General Assembly.

* The International Covenant on Civil and Political Rights stipulates under Articles 23 and 24 of that covenant for the case of the child.

* The International Covenant on Economic, Social and Cultural Rights under Article 10 of that Covenant stipulates for the case of the child.

* Right of the child : Under the International Covenant the rights of the child are as under:

Right to life, to acquire nationality, to freedom of expression, to freedom of thought, to association, to education, to benefit from social security, to adequate standard of living.

* Child Labour.

* Child Abuse.

Migrant Workers:

* The Convention on the Protection of the Rights of Migrant Workers and members of their families.

* It was adopted by the General Assembly on 18th December, 1990.

* This convention has not been implemented in the absence of ratification.

* When 20 states will ratify it, then it will come into force.

* Definition of Migrant Workers :

i) Definition under Article 2 of the Convention.

ii) A person to be employed in a remunerative activity of the state of which he is not national.

* Rights of Migrant persons –

i) Rights to leave any state, Right to life.

ii) Protection against arbitrary and unlawful interference, against violence, physical injury, intimidation, arbitrary arrest and detention.

iii) Right against slavery and servitude, forced and compulsory labour.

iv) No imprisonment merely on the ground of failure to contractual obligation.

* Implementation Procedure:

Formation of Committee which includes 10 members;

Four more experts;

Term of office is four years.

* Reporting system:

The state must report to the Committee on judicial, legislative, administrative measures taken by the state on the Convention within a year after ratification of the Convention and every five years thereafter.

Refugees:

* Persons who have left their own country to avoid persecution or any military action.

* Convention relating to the Status of Refugee.

* Para 1 defines –

“Any person who due to fear of being persecuted (harassment) on the ground of race, nationality, religion, membership of particular social group or political opinion and due to such fear cannot return to his country.

* Analysis of the definition.

* Refugees differ from Internally displaced persons (IDP).

* United Nations Relief and Rehabilitation Administration was established for refugees with the prime object of relief, maintenance, and rehabilitation.

* International Refugee Organisation (IRO).

* United Nations High Commissioner for Refugees (UNHCR) Convention on the status of Refugee:

* Adopted in the year, 1951.

* Legal status of refugees is defined.

* It defined the rights and duties of the refugees and the provision is made for various aspects of their lives. Main provisions of the convention.

* Personal status of Refugee:

a) Governed by the law of the country in which he stays.

b) Movable and immovable property can be acquired and held.

c) Civil Rights.

d) No penalty on Refugees.

e) Expulsion of Refugee on the ground of National Security only.

Q. 35 : “International NGOs have done a considerable progress in securing Human Rights globally”. Discuss with special reference to Amnesty International.

Answer :

The concept of Human Rights was absent in the primitive society and also upto the 17th Century. The idea of Human Rights was promoted by the Natural Law theorists and jurists in the form of “Natural Rights”. However, the concept of Human Rights gained momentum when the civil and political rights of people were completely suppressed during the Second World War. In other words, the movement for securing Human Rights gained importance after the Second World War.

The General Assembly of the United Nations adopted the UDHR (Universal Declaration of Human Rights) in 1948. Subsequently, two International Covenants on –

i) Civil and Political rights; and

ii) Economic, Social and Cultural Rights, were adopted.

For the purpose of protection and care of especially under privileged persons, the organisation at Government level and private level emerged at International and National sphere.

Non-Governmental Organisation (NGO):

International organizations are divided into two categories viz. i) Inter-Governmental Organisation (IGO); and Non-Governmental Organisation (NGO).

In other words, the term “NGO” stands for non-governmental organisation. Such NGOs are known as private international organizations and such NGOs include private groups of religious, technical, cultural, scientific or philanthropic orientation.

NGOs at International level and National level:

There are certain important NGOs at the International level and National level. At the international level, there is an important NGO known as “Amnesty International” and at the National level i) Peoples Union for Democratic Rights; ii) Bandhu Mukti Morcha are all working in the field of Human Rights.

Functions of NGOs :

For the promotion of Human Rights the NGOs perform the following important functions amongst many others -

- * To collect the information and to monitor the same.
- * To educate about Human Rights by arranging seminars, workshops, consultations, etc.
- * To help the Government on legislation concerning promotion of Human Rights by drafting and interpreting them.
- * To render services in the area of social rights.
- * To prevent the abuse and to secure redress and humanitarian assistance to the victims of violation of Human Rights.

Objects of NGO :

- * To investigate the instances of Human Rights violations.
- * To function as the conscience of the nation in the field of Human Rights.
- * To act to promote and protect the Human Rights.
- * To aim at protection and empowerment of Human Rights and Human Dignity.

Amnesty International :

- * An organisation at International level.
- * It is working in the sphere of protection and promotion of Human Rights.
- * It has investigated the instances of violations of Human Rights as under -
 - i) Iran-Iraq War.
 - ii) Palestine and Israel Conflict.
 - iii) Indo-Pakistan Kashmir Issue.
 - iv) Iraq Invasion on Kuwait .
 - v) Afghanistan War.

Q. 36: Write Short Notes on :**1) UDHR = Universal Declaration of Human Rights.****Answer :**

UDHR proclaims that human rights are based on the inherent dignity and worth of every person whatever his nationality or domicile. The right to freedom and equality that are derived from this inherent dignity of every human person are inalienable, and therefore, superior to the powers of the State.

The UDHR recognizes that everyone is entitled to a social and international order in which the rights and freedoms set forth in the declaration can be realized. It proclaims that everyone has duties to the community in which alone the free and full development of the individual's personality is possible.

The UDHR was adopted by the General Assembly of the United Nations on 10th December, 1948.

[This day is celebrated as the International Human Rights Day]

UDHR is a treaty ? Yes or No ? [It is only a declaration and not a treaty.]

Many scholars, however, contend that UDHR despite being a mere declaration, has acquired the force of law as part of the customary law of nations. The best known Case is the 1980 judgment of the US Court of Appeals in *Filar v/s. Pana-Irla*. In this Case the Court held that prohibition of torture 'has become part of customary law, as evidenced and defined by the UDHR'.

2) UDHR + ICCPR + ICESCR = The International Bill of Rights.**Answer :**

Human Rights encompasses natural law, natural rights, equality, non-discrimination, individual freedoms, economic, social and cultural rights, political participation and democracy and self-determination. In fact,

the International Bill of Rights that consists of UDHR and the two Covenants, namely, ICCPR and ICESCR, comprises of all these elements.

3) Treaty :

Answer :

Treaty means, an international agreement contracted between States in written form and governed by International Law.

“Ratification”, “Acceptance”, “Approval” and “Accession” : mean, whereby a State establishes on the international plane its consent to be bound by a Treaty.

The United Nations Conference on the Law of Treaties is also called the “Vienna Convention”.

Every State possesses capacity to conclude Treaties

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

4) What are the Human Rights provisions of the UN Charter ?

Answer :

Articles 55 (c) and 56 of the UN Charter provide for promotion of human rights. All initiatives by the UN in the field of Human Rights are by and large based on these two Articles.

Articles 55 (c) states that UN shall promote universal respect for and observance of Human Rights and Fundamental Freedoms for all without distinction as to race, sex, language or religion.

Article 56 stipulates joint and separate action by the state in co-operation with the UN for promoting Human Rights.

5) What are the duties of the state ?

Answer :

The duties of the State are :

Duty of non-intervention.

Duty to refrain from fomenting civil strife in territory of other.

Duty of a state to see that it does not become a menace to world peace.

Duty to settle disputes by peaceful means.

Duty to refrain from threat and use of force.

Duty of non-recognition of illegal acquisition of other states.

Duty to carry international obligations.

Duty to assist UNO in action against aggressors.

Duty to respect human rights and fundamental freedoms of all individuals.

Duty to conduct relation with states subject to supremacy of international law.

Q. 37: What are the essential components of a state ?

Answer :

A state must have four essential components they are:

People : People as an aggregate living in a community;

Territory : There must be ‘geographical territory’ where the people have settled down. A wandering set of persons do not become a State.

Organization : There must be an organization of representatives of the people and rule according to law of the land. An anarchistic is not a State.

Sovereignty : A supreme independent authority. The State must be independent and have the capacity to enter into relationship with other State.

Q. 38: What are the principal organs of the United Nations.**Answer:****1. The General Assembly –**

Each member of the UN is a member of the assembly with one vote. The assembly is the main policy making body of the UN and it can instigate initiatives covering all UN's activities. Resolutions are adopted by majority vote though most are not binding in law. It meets annually in New York.

2. The Security Council –

Technically the most powerful organ of The UN, the council is charged with primarily the maintenance of internal peace and security. At any time there are 15 members of the council, including the 5 permanent members – China, France, UK, USA and Russia – Who have the power to veto any substantive resolution. The council may impose economic or military sanctions on delinquent states.

3. The Economic and Social Council [ECOSOC] –

Responsible for UN activity in the field of Economic and Social welfare, including responsibility of human rights.

4. The Trusteeship Council –

Responsible for the supervision of non-self-governing territories with a view to their eventual independence.

5. The International Court of justice [World Court] –

The primary judicial organ of UN, charged with the peaceful resolution of disputes in accordance with international law.

6. The Secretariat headed by the Secretary General –

Responsible for day-to-day running of UN. Its head is the Secretary General. It is tantamount to an international civil services.

Q. 39: State provisions in the Constitution of India that promote Public International Law ?**Answer:**

There are three main provisions and they are given in Article 51.

Article 51 of the Indian Constitution refers to promotion of international peace and security. It states that the State shall endeavour to:

1. Promote international peace and security.
2. Maintain just and honourable relations between nations.
3. Foster respect for international law and treaty obligations in the dealings of organized people with one another, and
4. Encourage settlement of international disputes by arbitration. Article 253 of the Indian Constitution refers to Legislation for giving effect to International agreements. It states that the Parliament has power to make any Law for implementing any treaty, agreement or convention with any country or countries or any decision made at any international conference, association or other body.

Article 246 of the Indian Constitution, SEVENTH SCHEDULE, List 1 – Union List, Item No. 14: Entering into treaties, agreements with foreign countries and, Implementing treaties, agreements and conventions with foreign countries.

Q. 40: What are the National Legislations and Rules pertaining to the protection of Human Rights in India ?

Answer :

Our Indian Constitution is an embodiment of the ideas enumerated in the THE UNIVERSAL DECLARATION OF HUMAN RIGHTS as they are contemporary documents. The Fundamental Rights contained in Part III and the Directive Principles of State Policy contained in Part IV of the Indian Constitution give expression to the idea of Human Rights and recognizes the Inherent dignity and of the inalienable right of all members of human family. Our Indian Constitution recognizes the force and spirit behind THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. Article 1 : "All Human beings are born free and equal in dignity and rights"

We have further enacted, various National Legislations to reaffirm and strengthen our faith in fundamental human rights in the dignity and the worth of the human person.

Some of the legislations are shown below :

- (a) The Protection of Human Rights Act, 1993.
- (b) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- (c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1995.
- (d) The Protection of Civil Rights Act, 1993.
- (e) The National Commission for Backward Classes Act, 1993.
- (f) The National Commission for Minorities Act, 1992.
- (g) The National Commission For Women Act, 1990.
- (h) The National Commission for Safai Karmacharis Act, 1993.
- (i) The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- (j) Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.

Q. 41 : State the statement of object and reasons of the Protection of Human Rights Act, 1993.

Answer :**Statement of object and reasons :**

India is a party to ICCPR and ICESCR adopted by the General Assembly of the UN on 16th December 1966. The human rights embodied in the aforesaid Covenants stand substantially protected by our Indian Constitution.

However, having regard to the specific concerns for human Rights and having regards to changing social realities and emerging trends and with a view to bringing about greater accountability and transparency, this Act has been enacted.

Human Rights under this Act means, the rights relating to Life, Liberty, Equality and Dignity of the individual guaranteed by the Indian Constitution, or embodied in the International Covenants and enforceable by Courts in India.

International Covenants means ICCPR and ICESCR.

Q. 42 : What are the powers and functions of the NHRC ?

Answer :

The NHRC shall perform any of the following functions :

- (a) Inquire *suo moto* or on a petition presented by victim on :
 - i) Violation of human rights.
 - ii) Negligence in prevention of such a violation by public servant.
- (b) Intervene in any proceedings involving any allegation of violation.

- (c) Visit any institution, jail where persons are detained.
- (d) Review safeguards provided under the Constitution.
- (e) Review factor and recommend remedial measures
- (f) Study treaties and other International instruments on human rights and recommend their effective implementation.
- (g) Promote research on human rights.
- (h) Spread human rights literacy.
- (i) Encourage NGOs and institutions in the field of human rights.
- (j) Any other function for promotion of human rights.

NHRC has no powers to award/punish but is merely a recommendatory body.

**Q. 43: Write a short note on :
Public International Law.**

Answer :

Public international law is defined as “the system of law which regulates the activities of entities possessing international personality”.

The value and authority of international law is entirely dependent upon the voluntary participation of states in its formulation, observance, and enforcement. Although, there may be exception, most States enter into legal commitments to other states out of enlightened self-interest rather than adherence to a body of law that is higher than their own. The formation of the United Nations created a means for the world community to enforce international law upon members than violate its charter. Traditionally, states were the subjects of international law. With the proliferation of international organizations over the last century, they have in some cases been recognized as relevant parties as well. Recent interpretations of international human rights law, international humanitarian law, and international trade law (e.g. NAFTA Chapter 11 actions) have been inclusive of corporations, and even individuals.

Public international law covers such diverse subject areas as Air law, Space law, Maritime law (i.e. both, shipping law, and the law of the sea), Diplomatic relations, Human rights law, Law of armed conflict, International environmental law, International economic law and International trade law. This body of law is expanding and developing all the time.

Public International law has three primary sources :

- i) **International treaties** : International treaty law is comprised of obligations states expressly and voluntarily accept between themselves in treaties.
- ii) **Custom** : Customary international law is derived from the consistent practice of states accompanied by *opinio juris*, i.e. the conviction of states that the consistent practice is required by legal obligation. Judgments of international tribunals as well as scholarly works have traditionally been looked to as persuasive sources for custom in addition to direct evidence of state behaviour.
- iii) **General principles of law (Art. 38 of the Statute of the International Court of Justice)** : General principles of law are those commonly recognized by the major legal systems of the world. Certain norms of international law achieve the binding force of peremptory norms (*jus cogens*) as to includes all states with no permissible derogations. Legal principles common to major legal systems may be invoked to supplement Public international law, when necessary.

Q. 44: Write short notes on the following :

- (a) Entry into force.

- (b) Ratification.
- (c) Signature.
- (d) Accession.
- (e) Reservations.
- (f) Optional Protocol.
- (g) Treaty bodies.
- (h) Reporting obligations of state parties.
- (i) General comments.
- (j) Domestic application of International Human Rights Law.
- (k) International Labour Organisation [ILO].

Answer :

(a) Entry into force :

Most treaties do not come into force immediately after their adoption for example ICCPR and ICESCR were adopted in the 1966 but came into force only in 1976, a Full ten years later.

A treaty may also stipulate when it will come into force. For example, ICCPR and ICESCR came into force three months after they were ratified by thirty-five state.

(b) Ratification :

The ratification of a treaty is the expression of acceptance of the obligation of the treaty. For example, a government may sign a treaty and announce its ratification once it has modified its law to bring them in conformity with the treaty. All states that ratify a treaty have to deposit a written notification with the concerned agency that originated the treaty. When a state ratified a treaty, it becomes state-party to the treaty.

(c) Signature :

The signature of a treaty is an expression of the intention to ratify the treaty. A treaty may be signed by the duly accredited representative of a state expressing the government's intention to ratify it. The treaty is later ratify according to procedures [a] stipulated under the national law.

[Also see Answer to Q. No. 39. (i.e. State provisions in the Indian Constitution that promote Public International Law)].

(d) Accession :

A state is said to accede to a treaty when it becomes party to a treaty that has already come into force. For example, if a state were to ratify ICCPR or ICESCR, it will be said to have acceded to that treaty.

(e) Reservations :

While signing, ratifying or acceding to a treaty, a state may express 'reservations' about certain provisions of that treaty. Reservations can only be made at the time a state becomes party to a treaty. It must be in writing.

The purpose of the reservation is to help a state to become parties to an international treaty, even if they do not agree with or wish to be bound by all its provisions. The discretion of state in deciding what reservations they wish to make is not unlimited. The general principle governing reservations is that reservations made to a treaty should be compatible with the objects and purpose of the treaty.

For example, India has made the following three reservations while acceding to ICESCR on 10th January 1979.

They are as under :

- (i) With respect to Article 4 of ICESCR, the Government of the Republic of India declares that the words 'right to self-determination' appearing [in this article] apply to the people under foreign

domination and that these words do not apply to sovereign independent States or to a section of a nations – which is the essence of national integrity.

[Note : These reservations also hold good for ICCPR].

(ii) With reference to Article 4 and 8 of ICESCR the GOI declares that the provision of the said article shall be so applied to be in conformity with the provisions of Article 19 of the Constitution of India.

(iii) With reference to Articles 7 (c) of ICESCR the GOI declares that the provisions of the said Article shall be so applied to be in conformity with the provisions of Article 16 (4) of the Constitution of India.

(f) Optional Protocol :

The Protocol is a document dealing with subsidiary matter to a treaty and is appended to that Treaty. The protocol is said to be an optional protocol when States are given the option not to subject themselves to a protocol even though they are party to the main treaty.

For example, the ICCPR contains two optional protocols. They are the first optional protocol that allows the Human Rights Committee to consider communications (complaints) from individuals claiming violations of rights contained in the Covenant. The second optional protocol is aiming at the abolition of death penalty.

India which has acceded to ICCPR on 10th April 1979 has however not ratified both the first and second optional protocol to ICCPR.

(g) Treaty Bodies :

Most human rights treaties incorporate mechanisms for monitoring the implementation of treaty obligations by state parties. For example ICCPR established a Human Rights Committee. Such committee established under different human rights treaties are called treaty-bodies.

The ICCPR, ICERD, CEDAW, CAT etc. contain provisions for the establishment of a Committee to monitor the respective treaty. The body established by these treaties have a clearly defined legal status and are permanent. Each treaty defines the terms and reference of these bodies.

The only exception to this rule is ICESCR. The ICESCR did not provide for a Committee to monitor its implementation by states. The states that ratified the Covenant were required to report to the ECOSOC. adopted a resolution establishing an independent committee for monitoring the Covenant on ESC rights. Based on this resolution, the Committee on ESC Rights started functioning from 1986.

(h) Reporting Obligations of State-Parties :

All states that ratify a treaty must submit a report to the Committee established under the treaty. The report should say how they put the provisions of the treaty into practice. Normally, the first report is submitted after one or two years of ratification of a treaty. The initial report is followed by a periodic report every three or four years. The purpose of the periodic report is to provide an update on the implementation of the concerned treaty. The treaty-bodies may also make request for additional information anytime without waiting for the periodic report. The reports submitted by a state to a treaty – body is an integral part of its obligation under the treaty.

The obligation is derived from the principle that states that ratify human rights treaties do so in good faith and are willing to subject their laws and human rights records to international monitoring.

(i) General Comments :

Most treaty bodies have interpreted the content of specific articles of the relevant treaty and the obligations of governments. These interpretations are referred to as 'General comments' or 'General Recommendations'. Since the texts of international human rights treaties are always defined precisely to accommodate different legal systems the General Comments clarify the ambiguities that hinder the

implementation of specific Articles of treaty. The General Comments are increasingly becoming authoritative interpretations of various categories of rights.

(j) Domestic application to International Human Rights Law :

The application of International Human Rights law by domestic courts depend on the nature of the legal system. In some cases state's ratification of the treaty is tantamount to it becoming part of domestic law without requiring further specific legislation. In other system, separate laws have to be enacted to incorporate international law as a part of domestic law. The general principle is that international law would apply to a state despite its domestic laws. All states, whatever their legal system are required to modify their laws and procedures to bring them in to conformity with treaty obligations.

(k) International Labour Organization (ILO).

International Labour Organization was established after the First World War on 19th April, 1919 as an autonomous institution partner of the League of Nations. Its head office is situated in Geneva. It was brought into relationship with the United Nations in 1946 through a special agreement. This special agreement was approved by the General Assembly on 14th December, 1946. International Labour Organization functions in close collaboration with the United Nations. The membership of the International Labour Organization is open for all states in the World.

The International Labour Organization is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It was founded in 1919 and is the only surviving major creation of the Treaty of Versailles which brought the League of Nations into being and it became the first specialized agency of the UN in 1946.

The outstanding feature of the IOS is of tripartite character, as it is representative in its organs of governments, employers and employees. It comprises of three main organs, namely, - 1) General Conference; 2) General Body; and 3) International Labour Office or Secretariat.

The ILO formulates international labour standards in the form of Conventions and Recommendations setting minimum standards of basic labour rights : freedom of association the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues. It provides technical assistance primarily in the fields of -

- vocational training and vocational rehabilitation;
- employment policy;
- labour administration;
- labour law and industrial relations ;
- working conditions ;
- management development;
- cooperatives;
- social security;
- labour statistics and occupational safety and health;

It promotes the development of independent employers' and workers' organizations and provides training and advisory services to those organizations. Within the UN system the ILO has a unique tripartite structure with workers and employers participating as equal partners with governments in the work of its governing organs.

The headquarters of ILO is Geneva and its present Director-General is Mr. Juan Somavia.

Q. 45 : Elaborate the Right to Development.

Answer :

The Declaration on the Right to Development was adopted by General Assembly Resolution 41/128 of 4th December, 1986, which proclaims the following Declaration on the Right to Development :

Article 1 -

- a) The right to development is an inalienable human right. Every human person is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized.
- b) The right to development also implies the full realization of the right of peoples to self-determination which includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2 -

- a) The human person is the central subject of development and beneficiary of the rights to development.
- b) All human beings have a responsibility for development, individually and collectively.
- c) States have the right and the duty to formulate appropriate national development policies.

Article 3 -

- a) States have the primary responsibility for the realization of the right to development.
- b) The realization of the right to development requires full respect for the principles of international law.
- c) States have the duty to as well as to encourage the observance and realization of the human rights.

Article 4 -

- a) States have the duty to facilitating the full realization of the right to development.
- b) Sustained action through effective international co-operation is essential to foster their comprehensive development.

Article 5 -

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights.

Article 6 -

- a) All states should co-operate in promoting observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.
- b) All human rights and fundamental freedoms are indivisible and interdependent; All States must Promote and protect of civil, political, economic, social and cultural rights.
- c) States should take steps to eliminate obstacles to development.

Article 7 -

All States should promote comprehensive development.

Article 8 -

- a) States should undertake eradicating all social injustices.
- b) States should encourage full realization of all human rights.

Article 9 -

- a) All the aspects of the right to development are invisible and interdependent.
- b) Nothing in the present Declaration shall be construed aimed at the violation of the rights set forth in the UDHR and in the International Covenants on Human Rights.

Article 10 -

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development.

Q. 46: Write notes on the following :**1) UNESCO.**

UNESCO - the United Nations Educational, Scientific and Cultural Organization.

(UNESCO) was founded on 16 November, 1945. For this specialized United Nations agency, it is not enough to build classrooms in devastated countries or to publish scientific breakthroughs. Education, Social and Natural Science, Culture and Communication are the means to a far more ambitious goal – to build peace in the minds of men’.

Today, UNESCO functions as a laboratory of ideas and a standard – setter to forge universal agreement on emerging ethical issues. The Organization also serves as a clearinghouse – for the dissemination and sharing of information and knowledge – while helping Member States to build their human and institutional capacities in Member States and six Associate Members in the field of education, science, culture.

UNESCO is working to create the conditions for genuine dialogue based upon respect for shared values and the dignity of each civilization and culture. This role is critical particularly in the face of terrorism, which constitutes an attack against humanity. The world urgently requires global visions of sustainable development based upon observance of human rights, mutual respect and the alleviation of poverty, all of which lie at the heart of UNESCO’s mission and activities.

The Preamble to the Constitution of UNESCO declares that –

‘since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed’.

In order that a unanimous, lasting and genuine peace may be secured, the Preamble declares that the States Party to the Constitution believed ‘in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth and in the free exchange of ideas and knowledge.’

As defined by the Constitution the purpose of the Organization is :

“to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion by the Charter of the United Nations’.

UNESCO is headquarter at Paris and its current director-General is Mr. Koichiro Matsuura, Japan.

The opening lines of UNESCO’s Constitution are engraved in ten languages on stone wall in the Square of Tolerance at its headquarters.

2) UNICEF.

UNICEF is the driving force that helps build a world when the rights of every child are realized. UNICEF has the global authority to influence decision – makers and the variety of partners at grassroots level to turn the most innovative ideas into reality.

That makes UNICEF unique among world organization, and unique among those working with the young.

UNICEF believes that nurturing and caring for children are the cornerstones of human progress. UNICEF was created with this purpose in mind – to work with others to overcome the obstacles that poverty, violence, disease and discrimination place in a child’s path and that they can, together, advance the cause of humanity.

UNICEF advocates for measures to give children the best start in life, because, proper care at the youngest age forms the strongest foundation for a person’s future.

UNICEF promotes girls' education – ensuring that they complete primary education as a minimum – because it benefits all children, both girls and boys. Girls who are educated grow up to become better thinkers, better citizens, and better parents to their own children.

UNICEF acts so as that all children are immunized against common childhood diseases and are well nourished, because it is wrong for a child to suffer or die from a preventable illness.

UNICEF works to prevent the spread of HIV/AIDS among young people, because, it is right to keep them from harm and enable them to protect others. It helps children and families affected by HIV/AIDS to live their lives with dignity.

UNICEF involves everyone in creating protective environment for children. It is present to relieve suffering during emergencies, and wherever children are threatened, because no child should be exposed to violence, abuse or exploitation.

UNICEF uploads the Convention on the Rights of the Child. It works to assure equality for those who are discriminated against, girls and women in particular.

UNICEF works for the 'Millennium Development Goals' and for the progress promised in the United Nations Charter. UNICEF strives for peace and security and works to hold everyone accountable to the promises for children.

UNICEF is part of the Global Movement for Children – a broad coalition dedicated to improving the life of every child. Through this movement, and events such as the United Nations Special Session on Children, UNICEF encourage young people to speak or participate in the decisions that affect their lives.

UNICEF has more than 7,000 people working in 157 countries around the world.

The UNICEF the United Nations Children's Fund is headquartered in New York.

3) Details on when the various International Covenants were entered into force and when signed, ratified and acceded to :

	Name of Covenant	Entered into force	India acceded on
ICCPR	Political and Civil Rights.	23 rd March, 1976	10 th April, 1979
ICCPR	First Optional Protocol.	23 rd March, 1976	Not a signatory.
ICCPR	Second Optional Protocol.	11 th July, 1991	Not a signatory.
ICESCR	Economic, Social and Cultural Rights.	3 rd January, 1976	10 th April, 1979.
CRC	Rights of Child.	2 nd Sept, 1990	11 th December, 1992
CRC	First Optional Protocol	Protocol not yet in force.	India is not yet a Signatory.
CRC	Second Optional Protocol		
			India Signed Ratified on
ICERD	Elimination of Racial Discrimination	4 th January 1969	2 nd Mar 3 rd Dec 1967 1968
CEDAW	Elimination of Discrimination against Women	3 rd September 1981	30 th July 9 th July 1980, 1993
CEDAW	Draft Optional Protocol	[@]	
CAT	Convention against Torture	26 th Jan 1987	14 th Oct Not yet 1997 ratified

CEDAW draft optional protocol adopted by the General Assembly on 6th October, 1999 and opened for signature on 10th December, 1999 and ratifications.

4) International Court of Justice [ICJ].

The UN Charter states that the International Court of Justice shall be the principal judicial organ of the United Nations. It shall Function in accordance with the annexed Statute of the Permanent Court of International Justice and forms integral part of the present Charter.

All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

The General Assembly or the Security Council may request the international Court of Justice to give an advisory opinion on any legal question.

The seat of International Court of Justice is at the Peace Palace in the Hague (Netherlands). It Began work in 1946, when it replaced the Permanent Court of International Justice which had functioned in the Peace Palace since 1922.

The Court has a dual role : to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

The Court is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council Sitting independently of each other. It may not include more than one judge of any nationality. Elections are held every three years for one-third of the seats, and retiring judges may be re-elected. The Members of the Court do not represent their governments but are independent magistrates.

The judges must possess the qualifications required in their respective countries for appointment to the highest judicial officer, or be jurists of recognized competence in international law. The composition of the Court has to reflect the main forms of civilization and the principal legal systems of the world.

Only States may apply to and appear before the Court. The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways :

- a) By the conclusion between them to submit the dispute to the Court
- b) By virtue of a jurisdictional clause. Several treaties or conventions contain a clause to such effect
- c) Through the reciprocal effect whereby each has accepted the jurisdiction of the Court
- d) In cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides.

The court discharges its duties as a full court but, at the request of the parties, it may also establish a special chamber. Since 1946, the Court has Delivered 90 Judgments on disputes concerning *inter alia* land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking the right of asylum, nationality, guardianship, right of passage and economic rights.

The Court decides in accordance with international treaties and conventions in force, international custom, the general principles of law and, as subsidiary means, judicial decision and the techniques of the most highly, qualified publicists. Eleven cases are currently pending before the ICJ.

The advisory procedure of the Court is open solely to international organizations. The only bodies at present authorized to request advisory opinions of the Court are five organs of the United Nations and 16 specialized agencies of the United Nations.

International Court of Justice(ICJ) -

To bring about by peaceful means, and in conformity with the principles of justice and international law, according to Article 92 of the Charter, as San Francisco Conference, it was decided to establish a Court which was named as International Court of Justice (ICJ).

ICJ situated at Hague (Netherlands) is the “ principle judicial organ” of the United Nations. The Court carries out its functions according to the statute which is an integral part of the Charter. It may be noted that the statute of the Court does not lay down expressly the objectives or the functions for which it has been established. However, its main objectives are – Firstly, to settle international disputes or situations, which are submitted to it by the states, in accordance with the principles of justice and international law; and Secondly, to render advisory opinion on legal questions to anybody which has been authorized in accordance with the Charter of the United Nations.

These 15 Judges of ICJ are elected for a term of 9 years and can also be re-elected after the expiry of their term. All the decisions of the Court are made on the basis of majority of the Judges. The President of the Court is empowered to give casting vote in case of a tie.

Jurisdiction – The jurisdiction of ICJ is open for all states of the World. Only states can be the parties to any dispute before the ICJ. Individuals cannot be parties to a dispute before the ICJ. International Organizations may request the ICJ to give advisory opinion on legal matters. Thus, the jurisdiction of the Court is divided into two categories – 1) to decide contentious cases; and 2) to give advisory opinion.

Criticism – The International Court of Justice has been criticized on the ground that it is partial and the judges are not adequately qualified on legal issues related to religion, culture of the disputed states. The appointment of Judges are also partial and unfair.

5) Food and Agricultural Organization [FAO].

The Food and Agriculture Organization of the United Nations leads international efforts to defeat hunger. Serving both developed and developing countries.

FAO acts as a neutral forum where all nations meet as equal to negotiate agreements and debate policy. FAO is also a source of knowledge and information. FAO helps developing countries and countries in transaction modernize and improve agriculture, forestry and fisheries practices and ensures good nutrition for all.

FAO's activities comprise four main areas :

- a) Putting information within reach.
- b) Sharing policy expertise.
- c) Providing a meeting place for nations.
- d) Bringing knowledge to the field.

6) What are the UN Millennium Development Goals ?

UN Millennium Declaration acts in the larger freedom towards security development and human rights for all.

In a world of inter-connected threats and opportunities, it is in each country's self-interest that all of these challenges are addressed effectively. Hence, the cause of larger freedom can only be advanced by broad, deep and sustained global cooperation among States.

The United Nations must be reshaped in ways not previously imagined, and with a boldness and speed not previously shown –

- I. Freedom from wants.
- II. Freedom from fear.

III. Freedom to live in dignity.

The eight Millennium Development Goals [target date 2015] are –

- a) Eradicate extreme poverty and hunger.
- b) Achieve universal primary education.
- c) Promote gender equality and empower women.
- d) Reduce child mortality.
- e) Improve maternal health.
- f) Combat HIV/AIDS, Malaria and other diseases.
- g) Ensure environmental sustainability.
- h) Develop a global partnership for development.

"The National Commission For Women Act, 1990"**[No. 20 of 1990]**

An Act to consolidate a National Commission for Women and to provide for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows : -

CHAPTER : I**PRELIMINARY****(Sections 1 – 2)**

1. **Short title, extent and commencement** – 1) This Act may be called the National Commission For Women Act, 1990. 2) It extends to the whole of India except the State of Jammu and Kashmir. 3) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.
2. **Definitions** – In this Act, unless the context otherwise requires –
 - a) 'Commission' means, the National Commission for Women constituted under Section 3.
 - b) 'Member' means, a member of the Commission and includes the Member-Secretary.
 - c) 'Prescribed' means, prescribed by rules made under this Act.

CHAPTER : II**THE NATIONAL COMMISSION FOR WOMEN****(Section 3 – 9)**

3. **Constitution of the National Commission for Women** –
 - 1) The Central Government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on, and to perform the function assigned to, it under this Act.
 - 2) The Commission shall consist of –
 - a) a Chairperson committed to the cause of women, to be nominated by the Central Government;
 - b) five Members to be nominated by the Central Government from amongst persons of ability integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to increasing the employment potential of women, women's voluntary organisations (including women activists) administration, economic development, health, education or social welfare: Provided that at least one Member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes respectively;
 - c) a Member-Secretary to be nominated by the Central Government, who shall be –
 - i) an expert in the field of management, organisational structure or sociological movement, or
 - ii) An officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.
4. **Term of office and conditions of service of Chairperson and Members** –
 - 1) The Chairperson and every Member shall hold office for such period not exceeding three years as may be specified by the Central Government this behalf.
 - 2) The Chairperson or a Member (other than the Member-Secretary who is a member of a civil service in the Union of an all-India service or holds a civil post under the Union) may, by writing and addressed to the Central Government, resign from the office of Chairperson or, as the case may be, of the Member at any time.
 - 3) The Central Government shall remove a person from the office of Chairperson or a Member referred in sub-section (2) if that person –

- a) becomes an undischarged insolvent;
 - b) gets convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude;
 - c) becomes of unsound mind and stands so declared by a competent court;
 - d) refuses to act or becomes incapable of acting;
 - e) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission; or
 - f) in the opinion of the Central Government, has so abused the position of Chairperson or Member as to render that person's continuance in office detrimental to the public interest Provided that no person shall be removed under this clause until that person has been given a reasonable opportunity of being heard in the matter.
- 4) A vacancy caused under sub-section (2) or otherwise shall be filled by fresh nomination.
 - 5) The salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members shall be such as may be prescribed.

5. Officers and other employees of the Commission -

- 1) The Central Government shall provide the Commission with such officers and employees as may be necessary for the efficient performance of the function of the Commission under this Act.
- 2) The salaries and allowances payable to, and the other terms and conditions of service of the officer and other employees appointed for the purpose of the Commission shall be such as may be prescribed.

6. Salaries and allowances to be paid out of grants -

The salaries and allowances payable to the Chairperson Members and the administrative expenses including salaries, allowances and pensions payable the officers and other employees referred to in section 5, shall be paid out of the grants referred to the sub-section (1) of section 5.

7. Vacancies, etc., not to invalidate proceedings of the Commission -

No act or proceeding of the Commission shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Commission.

8. Committees of the Commission -

- 1) The Commissioner may appoint such committees as may be necessary dealing with such special issues as may be taken up the Commission from time to time.
- 2) The Commission shall have the power to co-opt as members of any committee appointed under sub-section such number of persons, who are not Members of the Commission, as it may think fit and the persons so co-opt shall have the right to attend the meetings of the committee and take part in its proceedings but shall not have the to vote.
- 3) The persons so co-opted shall be entitled to receive such allowances for attending the meetings of the com as may be prescribed.

9. Procedure to be regulated by the Commission -

- 1) The Commission or a committee thereof shall meet as and when necessary and shall meet at such time and place as the Chairperson may think fit.
- 2) The Commission shall regulate its own procedure and the procedure of the Committees thereof.
- 3) All orders and decisions of the Commission shall be authorised by the Member-Secretary or any other officer of the Commission duly authorised by the Member-Secretary in this behalf.

CHAPTER : III**FUNCTIONS OF THE COMMISSION****(Section 10)****10. Functions of the Commission –****1) The Commission shall perform all or any of the following functions, namely, –**

- a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
- b) present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- c) make in such reports, recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
- d) review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
- e) take up the cases of violation of the provisions of the constitution and of other laws relating to women with the appropriate authorities;
- f) look into complaints and take *suo moto* notice of matters relating to –
 - (i) deprivation of women's rights;
 - (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
 - (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
- g) call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all-spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- i) participate and advise on the planning process of socioeconomic development of women;
- j) evaluate the process of the development of women;
- k) inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- l) fund litigation involving issues affecting a large body of women;
- m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
- n) any other matter which may be referred to it by Central Government.

2) The Central Government shall cause all the reports referred to in clause b) of sub-section 1, to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

3) Where any such report or any part thereof relates to any matter with which any State Government is concerned the Commission shall forward a copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action

taken or proposed to be taken the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

4) The Commission shall, while investigating any matter referred to in clause (a) or sub-clause (i) of clause sub-section 1), have all the powers of a Civil Court trying a suit and, in particular in respect of the following matter namely,

- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- b) requiring the discovery and production of any document;
- c) receiving evidence on affidavits;
- d) requisitioning any public record or copy thereof from any court or office;
- e) issuing commissions for the examination of witnesses and documents; and,
- f) any other matter which may be prescribed.

CHAPTER : IV

FANANCE, ACCOUNTS AND AUDIT

(Sections 11 – 13)

11. Grants by the Central Government –

- 1) The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Commission by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.
- 2) The Commission may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

12. Account and audit –

- 1) The Commission shall maintain proper account and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consult with the Comptroller and Auditor-General of India.
- 2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable the Commission to the Comptroller and Auditor-General.
- 3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Commission under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General, generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers, other documents and papers, and to inspect any of the offices of the Commission.
- 4) The accounts of the Commission, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government by the Commission.

13. Annual Report –

The Commission shall prepare in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

14. Annual Report and Audit Report to be Laid Before the Parliament.

CHAPTER : V**MISCELLANEOUS****(Sections 15 – 17)****15. Chairperson, Members & Staff of the Commission to be Public Servants –**

The Chairperson, the Members, officers and other employees of the Commission shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

16. Central Government to Consult Commission –

The Central Government shall consult the Commission on a major policy matters affecting women.

17. Power to Make Rules –

1) The Central Government may, by notification in the Official Gazette, make rules carrying out the provisions of this Act.

2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely, –

a) salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of Section 4 and of officers and other employees under sub-section (2) of Section 5;

b) allowances for attending the meetings of the committee by the co-opted persons under sub-section (3) of Section 8;

c) other matters under clause (f) of sub-section (4) of Section 10;

d) the form in which the annual statement of accounts shall be maintained under sub-section (1) of Section 12;

e) the form in, and the time at, which the annual report shall be prepared under Section 13;

f) any other matter which is required to be, or may be, prescribed.

3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two more successive sessions, and if, before the expiry of the session immediately following the session or successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Important Case Law :

1) Anglo Iranian Oil Co. (Jurisdiction 1962)

Facts: On April, 1933, the Iranian Government granted a concession to the Anglo-Iranian Oil Co. for a period of 60 years. All differences related to the Concession were to be submitted to arbitration by three Arbitrators, one each to be appointed by the Company and by the Government and the Umpire by two Arbitrators jointly. If there was no agreement on this point, either party could apply to the President of the World Court to make the appointment. Similarly, if one of the parties failed to make an appointment, the other party could apply to the President of the World Court to appoint a Sole Arbitrator. It was further agreed that the performance of the agreement would be based on principles of good-will and good faith whilst on a reasonable interpretation of the agreement, and the Government of Iran agreed that the Concession "shall not be annulled and the terms shall not be altered either by general and special Legislation in the future, or by administrative measures or any other Acts whatever of the Executive Authority"

2) Anglo-Norwegian Fisheries Case (1951)

Facts: A decree of the Norwegian Government was promulgated in 1935, purporting to define its fisheries zone, by reference to base lines drawn through 48 selected points on the main land. The sea enclosed by these lines and the adjoining seaward belt of waters to a width of four miles was to constitute the zone. The result of the decree was to include large stretches of sea, including coastal indentation which normally would have been open sea in which other States would have been entitled to fish.

Great Britain challenged the validity of the decree on the ground that it was contrary to international law. The dispute was referred to the International Court of Justice. The International court of Justice gave its decision in 1951, holding that the method followed in the decree and the actual lines themselves did not contravene international law.

Significance: The decision of the International Court of Justice in this case is considered a landmark in the development of the law regarding territorial waters. The International Court of Justice held in this case-

- (a) That if a littoral State defines its territorial waters by reference to base lines comprising of points on the main land and the islands drawing of the lines is reasonable, just and not arbitrary.
- (b) That such base lines need not be drawn parallel to the low water mark on the coast, so long as the general direction of the shore is followed.
- (c) That the waters of bays and gulfs may be deemed part of the territorial waters, notwithstanding that the distance between the head lands is greater than ten miles.

Apart from this principle regarding the base line, the case has other far-reaching consequences:

- (i) The International Court of Justice held, in this case, that the maritime belt is not so much a limited artificial extension of a State's territorial domain, but is a contiguous area wherein, for economic security and geographical reasons, the coastal State is entitled to exercise exclusive sovereign rights. According to this decision, a State might take even its economic interest into consideration while defining the maritime belt.
- (ii) Another contribution of this case is that, by implication, it defined the seas or the open sea as all parts of the sea which are not-
 - (a) The territorial sea, or
 - (b) Internal waters.
- (iii) Further, this case shows that the International Court of Justice is free to develop international law, without being tied by the weight of practice and authority. But the decision has been criticised by many of the failure of the International Court of Justice to pay proper regard to the weight of practice and judicial precedence.

3) The Case concerning the Barcelona Traction Light and Power Co. Ltd. (second phase), (1970).

In the Case concerning the Barcelona Traction Light and Power Co. Ltd. (Second Phase), an interesting question arose, as to whether the State is entitled to espouse the claim of companies and its shareholders. In this case, the Barcelona Traction Light & Power Co. Ltd. Was incorporated in Canada, and it was operating in Spain. But a considerable investment in the company was made by shareholders in Belgium. Certain action taken by the Government of Spain caused serious loss and damage to the Company. In the eyes of law, the Company was of Canadian nationality, though the majority of the shareholders affected were Belgian nationals. The Government of Belgium espoused the cause of its citizens as shareholders.

The International Court of Justice came to the following:

- (a) Only the national State of a Company concerned was entitled to exercise diplomatic proceedings for the conclusions purpose of seeking redress of the wrong done to the Company.
- (b) When a wrong is done to the Company, the wrongdoer is not liable to the shareholders. Therefore, the Spanish State was not liable to the Belgian shareholders. As Canada had not espoused the cause, Belgium had no locus standi to espouse, before the Court of International Justice, the claims of Belgian Nationals who were shareholders in the Company.

4) Corfu Channel (Merits) Case (1949)

Facts: The Corfu Channel constitutes a frontier between Albania and Greece. The British warships passing through the same channel were seriously damaged by mines in the Albania territorial waters. This damage, done on 22nd October, 1946, not only caused damage to the warships, but also resulted in the death of and injuries to several persons. In November, 1946, the Units of the British Navy, without the consent of the Government of Albania, conducted mine sweeping operations in the channel. A dispute arose between Great Britain and Albania. The matter was taken before the Security Council. Then, the dispute was referred to the International Court of Justice. The preliminary question arising in the matter is discussed under Case No. 14, below. Apart from this preliminary question, two questions were raised in this case:

- (1) Was Albania responsible under the International Law for the damage caused and loss of human life by explosions in its territorial waters? If so, was Albania liable to pay compensation to Great Britain?
- (2) Had Great Britain violated the sovereignty of Albania, by carrying on the mine sweeping operations in the territorial waters of Albania?

It was held that, by carrying on the mine sweeping operations in the territorial waters of Albania, without its consent, the United Kingdom had violated the sovereignty of Albania and thereby was guilty of intervention not justifiable in international law.

Significance: The International Court of Justice stated in this case that:

- (a) It was a "generally well-recognised principle that every State is under an obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".
- (b) Warships are, in times of peace, entitled to a right of inoffensive passage through such parts of the territorial sea as form an international highway and cannot be prohibited from exercising this right.
- (c) The decisive criterion of a strait as a highway was its geographical situation, as connecting two parts of the open sea and the fact of its use for international navigation and not whether there was considerable volume of traffic passing through it.

5) The Francona Case (R. v. Keyn) (1876)

Facts: The Franconia, German Steamer, collided with Strathclyde, a British steam vessel, on the sea, at a distance of about two miles from dover pear-head. Keyn was indicated for manslaughter and convicted by the lower Court. A question of law was reserved by the Court of Criminal Appeal. The Court of Appeal had to decide whether the English Courts could exercise jurisdiction over an offence committed within a distance of three miles from the English shore. It was held by a majority that the English Court had jurisdiction over such offence.

Significance:

- (a) It was held in this case that International Law was not part of English law, unless adopted by legislation.
- (b) This case also is interesting for the views of Lord Coleridge regarding the nature of International Law. His Lordship observed, "Strictly speaking, International Law is an inexact expression and it is apt to mislead if its inexactness is not kept in mind. Law implies a law giver, a tribunal capable of enforcing it and coercing its transgressors. But there is no common law giver to a Sovereign State and no tribunal has the power to bind them by decrees or coerce them if they transgress".

6) I'm Alone Case (1929) (B.U. Apr. 83)

Facts: The Ship "I'm Alone" was a British Schooner of Canadian Registry. The Ship was engaged in the smuggling of alcohol into the United States. This ship was sunk in 1929 by United States Coast Guard Vessel, at a point on the high seas more than 200 miles from the United States coast. The Canadian Government claimed damages. The matter was referred to an arbitration. The award was in favour of Canada.

The argument of the United States was that the ship was in fact owned by the American nationals, though de jure, the ship was of Canadian nationality. It was also urged that the damages awarded would ultimately go to the pockets of American citizens. But these contentions on behalf of the United States of America, were of no avail. The Canadian Government was entitled to claim as injury was caused to a ship of its nationality.

The other significance of the case is that the Arbitral tribunal awarded two separate heads of damages, the other being in respect of injury to claimant State.

It may be noted here that such an award made in the I'm Alone case is consistent with the views expressed by the International Court of Justice in its Advisory Opinion on Reparation for Injury suffered in the Service of the United Nations. (1949).

7) The Lotus Case (1927)

Facts: The French mail steamer, the Lotus, collided on the high seas with a Turkish ship. It was alleged that the collision was due to the gross negligence of the Officer of the Watch on board the Lotus. The result was that the Turkish ship sank, and eight Turkish nationals on board died. The collision took place on the high seas. Subsequently, the board members of the Lotus were taken to Constantinople. The Turkish authorities instituted proceedings against the Officer of the Watch, basing their claim to jurisdiction on the ground that the act of negligence on board the Lotus had produced the effects on the Turkish ship and according to the objective territorial principle, the Turkish authorities were justified in exercising the jurisdiction. France protested against this exercise of jurisdiction by the Turkish authorities. The dispute was referred to the Permanent Court of International Justice. By a majority decision, the Permanent Court held that the action of the Turkish authorities was not inconsistent with international law.

Significance:

- (a) This case is also an authority on the 'floating island' theory of a ship. The International Court of Justice considered the effect of the negligence on the Turkish ship to be an effect on an operation of Turkish authority. Therefore, the objective territorial principle was applicable.
- (b) It was also pointed out in this case that no presumption of immunity arises from the fact that the person against whom the proceedings are taken is a foreigner.
- (c) However, one of the judges in this case pointed out that an article of the Turkish Penal Code, whereby jurisdiction was asserted over foreigners committing offences abroad "to the prejudice" of a Turkish subject, was contrary to international law. According to him, the passive nationality principle of jurisdiction was not to be generally accepted. The same view is also supported in the Cutting case.
- (d) It may be noted that the objective territorial principle of jurisdiction as laid down in the Lotus case was not generally acceptable to mariners and it has been disapproved by the Conference at Brussels

in 1962, which adopted the Convention for the unification of certain rules relating to Penal jurisdiction in matters of collision and other incidents of navigation.

- (e) It may also be noted that the International Law commission has disapproved of the rule laid down in the Lotus Case.
- (f) This case is also significant in view of the fact that the Court refused to deduce a customary rule where State judicial decisions on the point were divided.

It must be noted, however, that the principle laid down in the Lotus Case has not been approved by the International Law Commission. The Brussels Convention for the Unification of Certain Rules relating to Penal Jurisdiction in Matters of Collision and other Incidents of Navigation, now provides for the exclusive jurisdiction of the flag State in penal and disciplinary proceedings out of collision cases, subject to penal jurisdiction being conceded to a non-flag State over an accused person of its nationality.

8) The Cristina (Compania Naviera Vascongado v. Cristina S.S.)

Facts: During the Spanish Civil War (1936-1939), General Franco's Army captured from the Republican Government, the Port of Bilbao. The Cristina was a ship registered at Bilbao. The Republican Government issued a decree a week later, requisitioning all ships registered at Bilbao. When the Cristina arrived in a British Port, she was taken charge of by the Spanish Consul. The original owners of the vessels raised an action by a writ in rem and claimed possession of the vessel as sole owners. The Spanish Government entered a conditional appearance and contended that the action be dismissed as it impleaded a foreign sovereign State.

The House of Lords held, in Appeal, that the contention of the Spanish Government was good, and that a sovereign state could not be impleaded, unless it consented. It was also held that as the Spanish vessel was brought within the description of public property of the State. Therefore, it was immune from the jurisdiction of the English Courts.

Significance: The House of Lords observed in this case that, as a condition of obtaining immunity, the foreign Government needs only to produce evidence showing that "its claim is not merely illusory, nor founded on a title manifestly defective".

Another problem discussed in this case was whether the State-owned commercial ships should enjoy immunity. Lord Maugham observed that as diplomatic representations made to foreign states would render a very uncertain remedy, the foreign State-owned commercial ships should not enjoy the immunity. However, it may be noted that the majority held that immunity would extend to State-owned commercial ships also.

9) Eastern Greenland Case (1933) (B.U. Apr. 83, 84 & Nov. 82, 83)

Facts: The dispute in this case arose between Denmark and Norway regarding Denmark's claim of sovereignty over the whole of Greenland. The foreign ministers of these two Governments had discussed the matter, and the foreign minister for Norway had assured that the plans of the Danish Government respecting Danish sovereignty over the whole of Greenland would meet with no difficulties on the part of Norway. This assurance was regarding Norway's attitude at the Paris Peace Conference of 1919.

The question to be decided by the International Court of Justice was whether the declaration made by the foreign minister for Norway did not constitute an engagement, obliging Norway to refrain from occupying any part of the territory of Greenland. It was held that an oral declaration in the nature of a promise made by the minister of foreign affairs of one country on behalf of the country to the minister of foreign affairs of another, and in a matter within his competence and authority may be as binding as a formal written treaty. International Law does not as yet require established forms of treaties.

Significance: The Court also laid down, in this case that occupation to be effective, requires on the part of the appropriating State, two elements;

- (i) An intention or will to act as sovereign and

- (ii) The adequate exercise or display of sovereignty.

10) The Island of Palmas Arbitration (Asked at B.U. Apr. 84)

Facts: The Palmas Island is situated half-way between the Phillipine Islands and the former Netherland East Indies. In 1906, there was a dispute between the U.S.A and the Netherlands regarding sovereignty over this Island. The contention of American Government was that the Island was ceded to the U.S by the treaty of 1808 by Spain. The Dutch Government maintained that the Island was a part of its territory and that Spain from whom U.S.A claimed to have acquired sovereignty over the Island never had any right over the same. The dispute was referred to the Permanent Court of Arbitration. It was held that, though Spain was responsible for the discovery of the Island, it was not in effective control of the Island. On the other hand, the Netherland's East India Company was in possession of the Island and exercised sovereignty over the same since 1677.

Significance:

- (a) In his Award, Max Huber, the Arbitrator, described sovereignty in these terms—"Sovereignty, in the relation between States, signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a State".
- (b) It was also held in this case that if a State were to occupy a territory, there must be display of effective control and authority either by the claiming sovereignty or by a State from which the State claiming sovereignty can prove that the title has been derived.
- (c) It is claimed by some writers that the award in the Island of Palmas case is an authority to support the doctrine of acquisitive prescription in International Law.

11) Paquete Habana (1900)

Facts: The Paquete Habana, a fishing boat and another fishing boat, Lola, flying the Spanish flag and belonging to Spanish subjects, were captured by a United States warship engaged in the blockade of the North coast on Cuba. They were brought before the Court for condemnation. The question that was to be decided was whether, under customary International Law, fishing boats were exempt from capture. The Supreme Court of the U.S.A reversing the order of the lower court, held that they were free from capture.

Significance:

- (a) This case is illustrative of the attitude of the American Courts towards International Law. During the course of the judgement, Gray. J. made the following remarks:
"International Law is part of our law, and must be ascertained and administered by the Courts of Justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination."
- (b) This case is also illustrative of the judicial method in the application of custom. The Supreme Court, after a detailed investigation of State laws and practice, treaties, writings of publicists evidencing usage and decisions of courts, found that they uniformly proved the existence of a valid customary rule giving immunity to small fishing vessels from belligerent action in times of war.
- (c) This case is also illustrative of the function of State judicial decisions in clarifying an international nature of custom of law.
In this case, Gray, J. also pointed out that the juristic works have the value of being, on many occasions, the evidence of International law. He observed: "Such works are restored to by judicial tribunals, not for the speculation of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is".

**Objective Questions
With
Solutions
On**

"Human Rights In International Law"

[N.B : (Please Note That) The following objective questions are important for All India Bar Examination, which is compulsory for obtaining Sanad to practice as an Advocate].

1. Human Rights are never called –
 - a) fundamental rights.
 - b) primary rights.
 - c) secondary rights.
 - d) natural rights.
2. The following is not the theory of Human Rights –
 - a) Natural Law Theory.
 - b) Positivism or the Theory of the Authority of the State.
 - c) Marxist Theory.
 - d) Capitalist Theory.
3. Preamble of the U.N.O. Charter has reference of Human Rights as many as –
 - a) 7 times.
 - b) 6 times.
 - c) 8 times.
 - d) 5 times.
4. U. N. Commission on Human Rights was established in –
 - a) June, 1945.
 - b) February, 1946.
 - c) ~~December~~, 1947.
 - d) March, 1948.
5. A Commission on the Status of Women was established in –
 - a) 1945.
 - b) 1946.
 - c) 1947.
 - d) 1948.
6. Universal Declaration of Human Rights was adopted by the General Assembly on –
 - a) 10th Dec. 1947.
 - b) 20th Dec. 1946.
 - c) 10th Dec. 1948.
 - d) 15th Dec. 1945.
7. The members of the General assembly who voted for the adoption of the Declaration of Human Rights, were –
 - a) 40.
 - b) 48.
 - c) 46.
 - d) 50.
8. Preamble to the Declaration of Human Rights incorporates faith in –
 - a) the fundamental human rights.

- b) the dignity and worth of women.
 - c) the equal rights of men and women.
 - d) to all mentioned above.
9. Civil and Political Rights include –
- a) right to life and liberty.
 - b) prohibition of slavery and slavery trade.
 - c) rights to equality before law and legal remedies.
 - d) prohibition of torture and inhuman treatment.
 - e) all mentioned above.
10. European Convention on Human Rights and Fundamental Freedoms, 1950 contain –
- a) 68 Articles.
 - b) 66 Articles.
 - c) 70 Articles.
 - d) 72 Articles.
11. American Convention on Human Rights, 1969 was held in –
- a) Costa Rica.
 - b) San Francisco.
 - c) Chicago.
 - d) New York.
12. International Bill of Human Rights comprises –
- a) Universal Declaration of Human Rights, 1948.
 - b) The Covenant on Civil and Political Rights, 1966.
 - c) The Covenant on Economic, Social and Cultural Rights.
 - d) The Optional Protocol to the Covenant on Civil and Political Rights.
 - e) The all mentioned above.
13. Which right though proclaimed in the Declaration, could not find place in the Covenant –
- a) right of everyone to own property alone, as well as, in association with others.
 - b) right of everyone to a nationality.
 - c) both the above rights.
 - d) none mentioned above.
14. The rights though not proclaimed in the Declaration, yet find place in the Covenants are –
- a) the right of people freely to dispose of their natural wealth and resources.
 - b) the right of minorities to enjoy their own culture.
 - c) none of the rights mentioned above.
 - d) both of the rights mentioned above.
15. How many State Parties are there to the 1990 Convention on the Rights of the Child ?
- a) 120.
 - b) 124.
 - c) 126.
 - d) 128.
16. After making a global survey of 161 countries, Amnesty International has found that one of the biggest violators of human rights is –
- a) Russia.
 - b) China.
 - c) India.
 - d) America.
17. The U.N. General Assembly resolved to establish a voluntary fund (i.e. the U.N. Fund for Human Rights) to provide financial assistance to individuals among others who are the victims of contemporary forms of slavery and whose human rights have been violated by such practice. This resolution was made on –

- a) 10th Dec. 1990.
 - b) 18th Dec. 1991.
 - c) 12th Dec. 1997.
 - d) 15th Dec. 1966.
18. The members of the U.N. Commission of Human Rights are elected for a term of –
- a) 5 years.
 - b) 3 years.
 - c) 2 years.
 - d) 6 years.
19. Human Rights to aliens have been recognised by the Civil Covenant under its Article –
- a) 10.
 - b) 12.
 - c) 13.
 - d) 14.
20. India was re-elected a member of the U.N. Commission on Human Rights in May, 1982 for a new term beginning –
- a) 1st July, 1982
 - b) 1st October, 1982.
 - c) 1st January, 1983.
 - d) 1st April, 1983.
21. World Conference on Human Rights in June, 1993 was held at,
- a) Washington.
 - b) Beijing.
 - c) Vienna.
 - d) City other than the above three.
22. The Sub-Commission on the Prevention of Discrimination and Protection of Minorities consists of
- a) 5 persons.
 - b) 26 persons.
 - c) 62 persons.
 - d) 18 persons.
23. Originally, the Commission on the Status of Women was composed of 15 members. Slowly, the membership was increased. At present the Commission is composed of –
- a) 45 members.
 - b) 67 members.
 - c) 29 members.
 - d) 37 members.
24. U.N. High Commissioner for Human Rights is appointed by the Secretary-General of the U.N. for a term of –
- a) 6 years.
 - b) 4 years.
 - c) 3 years.
 - d) 5 years.
25. First U.N. High Commissioner for Human Rights, appointed on April, 1994 was –
- a) U. Thant.
 - b) Jose Ayala Lasso.
 - c) Kurt Waldheim .
 - d) Mrs. Mary Robinson.
26. U.N. Centre for Human Rights has been established at –
- a) Vienna.
 - b) Beijing.

- c) Geneva.
d) City other than the above three.
27. International Labour Organization was established in the year –
a) 1919.
b) 1939.
c) 1914.
d) 1944.
28. Article 1 of the Universal Declaration of Human Rights relates to –
a) Right to equality.
b) Right to life, liberty and security.
c) Prohibition of slavery.
d) Prohibition of torture and inhuman treatment.
29. Right to marry has been recognised by the Declaration under Article –
a) 14.
b) 15.
c) 17.
d) 16.
30. Fourth World Conference on Women, 1995 was held at –
a) Dhaka (in Bangla Desh).
b) Beijing (in China).
c) New York (in America).
d) Colombo (in Sri Lanka).
31. Protection of Human Rights Act came into force on –
a) 10 December, 1992.
b) 16 December, 1994.
c) 28th September, 1993.
d) 1st April, 1983.
32. The Act extends to the whole of India –
a) except the State of J. & K.
b) including the State of J. & K. pertaining to some matters only.
c) without any exceptions.
d) none of the above is true.
33. Armed Forces, as per Section 2 (a) of the Protection of Human Rights Act, means –
a) Naval Forces of the Union.
b) Military Forces of the Union.
c) Air Forces of the Union.
d) Any other Armed Forces of the Union.
e) All the Forces mentioned above.
34. As per Section 2 (d) of the Act, Human Rights mean the rights-
a) relating to the life, liberty, equality and dignity of the individual guaranteed by the Constitution.
b) embodied in the International Covenants and enforceable by the Courts in India.
c) none of the above.
d) both, a), and b).
35. International Covenants means –
a) The International Covenants on Civil and Political Rights adopted by the General Assembly of the United Nations on 16th Dec. 1966.
b) The International Covenants on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on 16th Dec. 1966.
c) Both the above Covenants.

- d) None of the above.
36. Article 14 of the Constitution of India envisages –
- a) equality before the law.
 - b) equal protection of the laws.
 - c) both the above.
 - d) none of the above.
37. Concept of equality does not mean absolute equality among human beings which is not possible to achieve. It implies absence of any privilege in favour of an individual by reason of,
- a) birth.
 - b) birth or creed.
 - c) birth or creed, or the like.
 - d) none of the above.
38. Equality before the law means that, among equals the law should be equal and should be equally administered. The right to sue and be sued to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinction of –
- a) race or religion.
 - b) wealth or social status.
 - c) political status.
 - d) any or all of the above.
39. Equal protection of laws has been interpreted to mean subjection to equal laws applying to all in the same circumstances. It only means that, all persons have right to equal treatment in similar circumstances. The rule is that –
- a) the like should be treated alike.
 - b) unlike should be treated alike.
 - c) unlike should not be treated unlike.
 - d) like and unlike should be treated alike.
40. "The right to life and personal liberty is not an absolute right, but is subject to the conditions that life and liberty may be taken in accordance with the procedure established by law". This was held by the Supreme Court in case –
- a) Damayanti v/s. Union of India, AIR 1971, SC 966.
 - b) N.B. Khare v/s. State of Delhi, AIR 1950 SC 211.
 - c) State of U.P. v/s. Kaushalya, AIR 1964 SC 1170.
 - d) A. K. Gopalan v/s. State of Madras, AIR 1950 SC 27.
41. "The domiciliary visits at night by the Police are an invasion on the right of the petitioner's personal liberty". This was held by the Supreme Court in the case –
- a) Kharaksingh v/s. State of U.P. AIR 1963 SC 1295.
 - b) A.K. Gopalan v/s. State of Madras, AIR 1950 SC 27.
 - c) State of U.P. v/s. Kaushalya, AIR 1964 SC 1170.
 - d) N.B. Khare v/s. State of Dehli, AIR 1950 SC 211.
42. "A speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India". This was confirmed by the Apex Court in the case –
- a) Maneka Gandhi v/s. Union of India, AIR 1978 SC 597.
 - b) Raj Deo Sharma v/s. State of Bihar, AIR 1988 SC 3281.
 - c) State of Maharashtra v/s. Chandrabhan (1983) SCC 387.
 - d) People Union for Democratic Rights v/s. Union of India, AIR 1982 SC 1473.
43. "There is no deprivation of personal liberty or breach of Article 21 of the Constitution of India involved in the medical examination of the human body. The Court hearing a matrimonial petition has the jurisdiction to appoint a doctor for examining the party to know and report whether he or she was able to consummate the marriage". This was confirmed in the case –

- a) G. Venkatanarayan v/s. Kurupati Laxmidevi, AIR 1985 A.P. 1.
b) Raj Deo Sharma v/s. State of Bihar, AIR 1988 SC 3281.
c) State of Maharashtra v/s. Chandrabhan (1983) SCC 387.
d) Peoples Union for Democratic Rights v/s. Union of India, AIR 1982 SC 1473.
44. "Right to live is not merely confined to physical existence, but it includes within its ambit the right to live with human dignity. Thus non-payment of minimum wages to the workers was denial to them of their right to live with basic human dignity and violative of Article 21 of the Constitution of India". This was held by the Supreme Court in the case –
a) Kharaksingh v/s. State of U.P., AIR 1963, SC 1295.
b) A.K. Gopalan v/s. State of Madras, AIR 1950, SC 27.
c) State of Maharashtra v/s. Chandrabhan, (1983) SCC 387.
d) Peoples Union for Democratic Rights v/s. Union of India, AIR 1982, SC 1473.
45. "The right to live is not restricted to mere animal existence. It means something more than physical survival. The right to live is not confined to, but it also includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing with fellow human beings". This was held by the Supreme Court in the case –
a) Kharaksingh v/s. State of U.P. AIR 1963 SC 1295.
b) Francis Coralie v/s. Union Territory of Delhi, AIR 1981, SC 746.
c) State of Maharashtra v/s. Chandrabhan (1983) SCC 387.
d) A.K. Gopalan v/s. State of Madras, AIR 1950 SC 27.
46. "Right to life is a natural right embodied in Article 21 of the Constitution of India, but suicide is an unnatural termination or extinction of life, and therefore, inconsistent with the concept of the right to life". This was held by the Supreme Court in the case of –
a) Smt. Gyan Kaur v/s. State of Punjab, AIR 1996 SC 946.
b) Mr. X v/s. Hospital Z, AIR 1999 SC 495.
c) A.P. Pollution Control Board v/s. M.V. Nayadu, AIR 1999 SC 812.
d) Vishakha v/s. State of Rajasthan, AIR 1997 SC 3011.
47. "Right to life of the lady with whom the patient was to marry would positively include the right to be told that a person proposed to be married was the victim of a deadly disease which was sexually communicable. Since the right to life includes right to lead a healthy life, so as to enjoy all faculties of the human body in their prime condition". This was held by the Supreme Court in the case –
a) Smt. Gyan Kaur v/s. State of Punjab, AIR 1996, SC 946.
b) Mr. X v/s. Hospital Z, AIR 1999, SC 495.
c) Apparel Export Promotion Council v/s. A.K. Chopra, AIR 1999, SC 625.
d) Vishakha v/s. State Of Rajasthan, AIR 1997 SC 3011.
48. "Environmental concerns arising under Article 32 or Article 136 or Article 226, are of equal importance as human rights concerns. In fact, both are to be traced to Article 21 which deals with fundamental right to life and liberty. While environmental aspects concern life, human rights aspects concern liberty". This was held by the Supreme Court in the case –
a) Smt. Gyan Kaur v/s. State of Punjab, AIR 1996, SC 946.
b) Mr. X v/s. Hopital Z, AIR 1999, SC 495.
c) A. P. Pollution Control Board v/s. M.V. Nayadu, AIR 1999, SC 812.
d) Vishakha v/s. State of Rajasthan, AIR 1997, SC 3011.
49. "Each incident of sexual harassment results in violation of the fundamental rights of gender equality and the right to life and liberty. It is clear violation of the rights under Articles 14, 15 and 21 of the Constitution of India". This was held by the Supreme Court in the case –
a) Smt. Gyan Kaur v/s. State of Punjab, AIR 1996, SC 946.

- b) Mr. X v/s. Hospital Z, AIR 1999, SC 495.
c) A.P. Pollution Control Board v/s. M.V. Nayadu, AIR 1999, SC 812.
d) Vishakha v/s. State of Rajasthan, AIR 1997, SC 3011.
50. Upholding its earlier judgement, the Supreme Court observed, "Each incident of sexual harassment at the place of work results in violation of the fundamental rights of gender equality and the right to life and liberty, the two most precious fundamental rights guaranteed in our Constitution are of sufficient amplitude to encompass all facets of gender equality". This was held in the case of –
a) Smt. Gyan Kaur v/s. State of Punjab, AIR 1996, SC 946.
b) Mr. X v/s. Hospital Z, AIR 1999, SC 495.
c) Apparel Export Promotion Council v/s. A. K. Chopra, AIR 1999, SC 625.
d) Vishakha v/s. State of Rajasthan, AIR 1997, SC 3011.
51. "Right to have pollution-free water is a part of right to life guaranteed by Art 21 of the Constitution." This was declared by the judiciary in the case –
a) S. K. Garg v/s. State of U.P. AIR 1999, All. 41.
b) Mr. X v/s. Hospital Z, AIR 1999, SC 495.
c) A. P. Pollution Control Board v/s. M.V. Nayadu, AIR 1999, SC 812.
d) Vishakha v/s. State of Rajasthan, AIR 1997, SC 3011.
52. Chairperson of the National Human Rights Commission is a person who –
a) has been a Chief Justice of the Supreme Court.
b) has been a Chief Justice of a High Court.
c) has been a Judge of a High Court.
d) has been the Attorney General of India.
53. The Headquarters of the National Human Rights Commission is situated at –
a) Kolkata.
b) Mumbai.
c) Delhi.
d) Chennai.
54. The Chairperson and other Members of the N.H.C. shall be appointed by the President by warrant under his hand and seal: Provided that, every such appointment shall be made after obtaining the recommendations of a Committee consisting of the Prime Minister as Chairperson, and other members which include –
a) Speaker of the House of the People.
b) Leader of Opposition in the House of the People.
c) Central Home Minister.
d) All the persons mentioned above.
55. Which of the following Cases relate infringement of Human Rights ?
a) Paramjeet Kaur v/s. State of Punjab, AIR 1999, SC 340.
b) Disappearance of Harjeet Singh in Punjab.
c) Alleged custodial death of Raja in Dharmपुरi District, Tamilnadu.
d) Firing by Security Forces in Bijbihara J. & K.
e) All the Cases mentioned above.

**Objective Questions
With
Solutions
On**

1) PUBLIC INTERNATIONAL LAW;

2) HUMAN RIGHTS IN INTERNATIONAL LAW;

3) HUMAN RIGHTS.

1) PUBLIC INTERNATIONAL LAW;

Choose appropriate options in respect of each of the question given below.

1) Some of the sources of International law are given below amongst which there is one which is not a source of International law. You are required to point out the same.

- a) International treaties and conventions
- b) International custom
- c) Legislation
- d) The general principles of Law recognised by civilised nations.

2) The state, as a person of International law, should possess certain characteristics as given below. However among them, there is one, which is not a characteristics of International law. You are required to point out the same.

- a) A permanent population.
- b) A defined territory.
- c) A Government.
- d) A peaceful co-existence.

3) Point out which of the following is not an economic or commercial alliance.

- a) Common Market.
- b) EFTA.
- c) LAFTA.
- d) NATO.

4) Point out which of the following is not the basic right of a State.

- a) Sovereignty and independence of states.
- b) The Equality of states.
- c) The right of territorial jurisdiction.
- d) Interference in the affairs of other states.

5) Below are given some of the principles of co-existence in which there is one principle which is inconsistent with such principles. Point out the same.

- a) Mutual respect for each-others' territorial integrity and Sovereignty.
- b) Mutual non-aggression.
- c) Mutual non- interference in each-others' affairs.
- d) Use of force to settle mutual differences.

6) Point out which of the following is not an obligation of neutralised state.

- a) Not to engage in hostilities except to defend itself.
- b) To obey the rules of neutrality during a war between other States.
- c) To defend itself against attack by all the means at its disposal.
- d) To defend neighbouring state with the use of force.

7) According to Oppenheim, there are certain occasions whereby recognition of a state is implied. Point out which of the following is not such occasion.

- a) The formal initiation of diplomatic relations.
- b) The issue of a consular exequatur by admitting state for a consul of an unrecognised State.
- c) In the case of recognition of belligerency, a proclamation of neutrality or some such unequivocal act.
- d) To sue a state for violation of certain rights.

8) There are certain modes of acquiring territorial sovereignty by a state given below amongst which one is not such a mode. Point out which of them is not such a mode.

- a) Occupation.
- b) Annexation.
- c) Accretion.
- d) Non-aggression.

9) Which of the following is not State ?

- a) Confederation.
- b) Unity State.
- c) Federal State.

10) For the purpose of jurisdiction, the territory of a state is not only its land mass, but it also includes certain other things given below. Among them is one which is inconsistent with these things. You are required to point out the same.

- a) Territorial seal or maritime belt.
- b) A Ship bearing its national flag.
- c) Ports.
- d) Sea.

11) The right of "Hot pursuit" can be exercised provided certain conditions are fulfilled given below.

However, among these conditions there is one which is inconsistent with these conditions. Point out the same.

- a) The pursuit should be stated at the earliest even through the foreign ship crosses the territorial waters.
- b) The pursuit must be continuous and uninterrupted.
- c) A visual or auditory signal must have been given asking ship to stop.
- d) The pursuing ship should be either a warship or a military air-craft or an authorised petrol vessel.

12) M.Nair classifies treaties under certain heads given below. However, one of them is not such a head, which you are required to point out the same.

- a) Treaties having the character of conveyance.
- b) Treaties having the character of contracts.
- c) Law-making treaties.
- d) Military alliance.

13) There are certain principles of interpretation of treaties. Some of which are given below. However, one of them is such which is not consistent with these accepted principles. You are required to point out.

- a) Grammatical interpretation.
- b) Object and context of the treaty.
- c) Reasonableness and consistency.
- d) Schedules.

14) Point out which of the following is not a school of International Law.

- a) Naturalists.
- b) Positivists.
- c) Grotians.
- d) Legalists.

15) There are two theories relating between International Law and state law. Among such theories given below one is not such theory, which is you required to be pointed out by you.

- a) Monism.
- b) Pluralism.
- c) Dualism .

Fill in the blanks :

16] According to _____ school, the laws of nations are only a part of the law of nature.

- a) Positivists.
- b) Naturalists.
- c) Grotians.
- d) Marxian.

17] According to Dicey, Private International Law is a _____ of laws.

- a) conflict.
- b) combination.
- c) division.
- d) classification.

18] The Congress of Vienna was held in -

- a) 1805.
- b) 1815.
- c) 1850.
- d) 1915.

19] The Maritime Law Convention of 1856 was held in -

- a) London.
- b) Paris.
- c) New York.
- d) Tokyo.

20] Grotius was a _____ scholar.

- a) Dutch.
- b) English.
- c) American.
- d) Italian.

21] The _____ school maintains that the laws of nature are only part of the Law of Nature.

- a) Positivists.
- b) Naturalist.
- c) Italian.
- d) Dutch.

22] Treaties constitute one of the important _____.

- a) part.
- b) sources.
- c) links.

23] A state is not only _____ of International Law.

- a) part.
- b) subject.
- c) source.
- d) link.

- 24] A state has ____ most important qualifications which distinguishes it from other organisations.
a) Two.
b) Five.
c) Four.
d) one.
- 25] It is the duty of every state not to ____ in the affairs of another state.
a) interfere.
b) participate.
c) look.
d) peep.
- 26] Along with the declaratory theory, the ____ theory is another theory of recognition of a state.
a) Constitutive.
b) Positive.
c) Demonstrative.
- 27] There are ____ modes of acquiring territorial sovereignty
a) Two.
b) Five.
c) Seven.
d) Nine.
- 28] Ratification is one of the important steps in concluding a ____
a) treaty.
b) convention.
c) talks.
d) agreement.
- 29] International Law is mainly a system regulating the rights and duties of ____ *inter se*.
a) states.
b) organisations.
c) associations.
d) groups.
- 30] International Law is a weak law and lacks _____.
a) sanction.
b) agreement.
c) consent.
d) intention.

State True or False :

- 31] State is not the only subject of "Public International Law".
True.
- 32] According to the dualistic theory of International Law, State laws have the same legal system.
False.
- 33] The Monroe doctrine was enunciated by President Monroe of the United States of America in 1923.
True.
- 34] A federal state is not a sovereign state.
False.
- 35] The doctrine of peaceful co-existence (*Panchsheel*) was propounded by Pt. Jawaharlal Nehru.
True.
- 36] Members of common-wealth have lost their sovereign power.
False.
- 37] There is a difference as to status of a High Commissioner representing a member of the Common Wealth and an envoy representing other foreign states.

- False.**
- 38] International Law is primarily a system regulating the rights and duties of states *inter se*.
True.
- 39] Without sovereignty there can be no state.
True.
- 40] Neutralisation is a collective act.
True.
- 41] There can be no collective recognition of States.
False.
- 42] It is said that the state, as a sovereign person can have no legal responsibility whatever.
False.
- 43] A river which lies wholly within the boundaries of one and the same state is known as a national river.
True.
- 44] A treaty can be concluded by mutual consent.
True.
- 45] The principle of reasonableness is one of the important principles in interpretation of treaties.
True.

Answer in not more than two sentences :

46] Define International Law.

Answer : International Law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe.

47] What are the kinds of International Law ?

Answer : There are two kinds of International Law – Public International Law and Private International Law.

48] Who is known as the father of International Law ?

Answer : Hugo Grotius is the father of the International Law.

49] Name the schools of International Law.

Answer : There are two schools of International Law, they are – (i) Naturalist School of Law; and (ii) Positivist School of Law.

50] What are the sources of International Law ?

Answer : The sources of International Law are : (a) Custom; (b) Treaties; (c) Decision of judicial tribunals or arbitral tribunals; (d) Writings or determination of organs of international institutions; (e) Decisions or determinations of the organs of international institutions.

51] What is meant by Intervention ?

Answer : As defined by Hyde, 'Intervention' means, a dictatorial interference in opposition to the will of a particular State and almost always serving, by design or implication, to impair the political independence of that state.

52] What is meant by recognition of a State ?

Answer : As defined by Fenwick, recognition of a state means, formal acknowledgement by the existing members of an international community of the international personality of a State or political group, not hitherto maintaining official relations with it.

53] What is a treaty ?

Answer : A treaty may be defined as an agreement of a contractual character between states; or between states and International Organizations, creating legal rights and obligations between the parties.

54] What is meant by a territorial waters ?

Answer : Territorial waters consist of the waters contained in a certain zones or belt called the maritime belt which surrounds a state and this includes part of the water in some of its bays, gulfs, and straits.

55] What is maritime belt ?

Answer : The maritime belt is a belt which is also known as 'Territorial Sea'. It comprises a belt of coastal waters to a width of at least three miles measuring from the low-water mark to their selected base-lines.

56] Is the *de jure* recognition precedent by the grant of *de facto* recognition?

Answer : Yes. *De Jure* recognition is preceded by *de facto* recognition.

57] What are the theories of recognition of a State ?

Answer : There are two main theories of recognition – (i) *Constitutive Theory*; and (ii) *Declaratory or Evidentiary Theory*.

58] What is a Micro-State ?

Answer : Micro-state means exceptionally small state. There is such state known as, 'Naru' having an area of 8.25 sq. miles with population of 3,000 persons.

59] How many are there the theories of International Law and state Law ?

Answer : There are two theories of International Law : (i) *Monism*; and (ii) *Dualism*.

60] What is meant by vessel state ?

Answer : A vessel state is one which is completely under sovereignty of another state.

V – Match the Column :

61] Group A

- 1] Naturalists.
- 2] Hugo Grotius.
- 3] Juristic Works.
- 4] Recognition De-Jure.
- 5] Occupation.
- 6] Maritime belt.
- 7] Recourse to extrinsic material.
- 8] Treaty.
- 9] Maritime belt.
- 10] Geneva Conference.
- 11] Treaty.
- 12] Treaty.
- 13] Dissolution of a Treaty.

Group B

- 1] 29th April, 1954.
- 2] 1949.
- 3] By mutual consent.
- 4] Article 102 of the Charter of United Nations.
- 5] Negotiations as one of the steps of conclusion.
- 6] 1958.
- 7] Territorial sea.
- 8] Ratification.
- 9] Interpretation of treaties.
- 10] Jurisdiction of State.
- 11] Mode of acquiring territorial sovereignty.
- 12] Kind of Recognition.
- 13] A source of International Law.

- 14] Corfu Channel case.
15] Peaceful Co-existence.

- 14] A Dutch scholar.
15] A school of International Law.

Answers :

Group A

- 1] Naturalists.
- 2] Hugo Grotius.
- 3] Juristic Works.
- 4] Recognition De-Jure.
- 5] Occupation.
- 6] Maritime belt.
- 7] Recourse to extrinsic material.
- 8] Treaty.
- 9] Maritime belt.
- 10] Geneva Conference.
- 11] Treaty.
- 12] Treaty.
- 13] Dissolution of a Treaty.
- 14] Corfu Channel case.
- 15] Peaceful Co-existence.

Group B

- 1] School of International Law.
- 2] A Dutch scholar.
- 3] A source of International Law.
- 4] Kind of Recognition.
- 5] Mode of acquiring territorial sovereignty.
- 6] Jurisdiction of State.
- 7] Interpretation of treaties.
- 8] Ratification.
- 9] Territorial sea.
- 10] 1958.
- 11] Negotiations as one of the steps of conclusion.
- 12] Article 102 of the Charter of United Nations.
- 13] By mutual consent.
- 14] 1949.
- 15] 29 April, 1954.

2) HUMAN RIGHTS :

Tick mark the correct option :

- 62] Point out which of the Article of the Constitution of India deals with equal justice and free legal aid –
- a] Article 39 of the Constitution.
 - b] Article 39-A of the Constitution.
 - c] Article 40 of the Constitution.
 - d] Article 41 of the Constitution.
- 63] Which article of U.N.O Declaration on children's Human Rights defines a child ?
- a] Article 1.
 - b] Article 2.
 - c] Article 4.
 - d] Article 6.
- 64] Which one of the below-mentioned Article of the UNO Declaration provides right to children for their survival and development ?
- a] Article 5.
 - b] Article 6.
 - c] Article 8.
 - d] Article 9.
- 65] Point out the Article of the U.N.O. Declaration on Children's Human Rights deals with liability of the parents.
- a] Article 2.
 - b] Article 4.
 - c] Article 5.
 - d] Article 8.
- 66] Point out in which of the following cities in 1990 a World Conference on Children's Rights was held –

- a] Mumbai.
- b] New York.
- c] Paris.
- d] London.

67] The Universal Declaration of Human Rights was declared by the U.N.O. in –

- a] 1946.
- b] 1948.
- c] 1951.
- d] 1955.

68] Point out the year from those given below in which the U.N.O. has adopted a Declaration on the Rights of the Disabled Persons.

- a] 1972.
- b] 1975.
- c] 1980.
- d] 1985.

69] Point out the date, on which Declaration on the Elimination of Discrimination Against Women was made by the U.N.O. General Assembly, from those given below.

- a] 7th Nov, 1967.
- b] 11th Oct, 1972.
- c] 30th Sept, 1930.
- d] 15th Sept, 1999.

70] Point out the Article of UNO Declaration on Children's Human Rights deals with security of the personality.

- a] Article 3.
- b] Article 16.
- c] Article 18.
- d] Article 20.

71] Which of the following Articles adopted under U.N.O. Declaration on Children's Human Rights deals with "Public Awareness" ?

- a] Article 42.
- b] Article 44.
- c] Article 45.
- d] Article 46.

72] Point out the Article of the Constitution of India from those given below which provides for living wages, etc for workers.

- a] Article 40.
- b] Article 41.
- c] Article 42.
- d] Article 43.

73] Which of the following Articles of the Constitution of India provides for free and compulsory primary education for children ?

- a] Article 44.
- b] Article 45.
- c] Article 46.
- d] Article 47.

74] Which of the following Articles of the Constitution of India deals with the organisation of Agriculture and Animal Husbandry ?

- a] Article 47.
- b] Article 48.

c] Article 49.

d] Article 50.

75] Point out Articles of the Constitution of India from those given below which provides for fundamental duties.

a] Article 50.

b] Article 51.

c] Article 51-A.

d] Article 49.

Fill in the blanks :

76] The Women's Conference was held in _____ 1995.

a] France.

b] England.

c] China.

d] Japan.

77] The Declaration on the Elimination of Discrimination Against Women was adopted by the General Assembly of the U.N.O. on –

a] 5-12-70.

b] 7-11-67.

c] 3-12-75.

d] 15-10-78.

78] The Declaration on the Limitation of Discrimination Against Women consists of ____ Articles.

a] 8.

b] 12.

c] 11.

d] 20.

79] Resolution regarding elimination of atrocities against women was adopted by the General Assembly of the U.N.O in –

a] 1850.

b] 1951.

c] 1993.

d] 2002.

80] Articles _____ of the Constitution of India provide valuable protection to women in India.

a] 14 & 15.

b] 20 & 22.

c] 24 & 25.

d] 29 & 30.

81] Every child has right to have ____ and ____ and the care of his parents and the state shall protect those rights as laid down in Article 7 of the U.N.O. Declaration on Children's Human Rights.

a] Name & Nationality.

b] Employment & Education.

c] Nation & Employment.

d] Political party & right to vote.

82] According to one survey there are _____ races in the world which have become the victims of discrimination.

a] 252.

b] 261.

c] 275.

d] 299.

83] The right to equality is a _____ right.

- a] Human.
- b] Political.
- c] Economic.
- d] Educational.

84] Every accused is presumed to be _____ until he is proved guilty.

- a] guilty.
- b] innocent.
- c] educated.
- d] cultural.

85] Article _____ of the Constitution of India requires that every accused should be given reasons of the charges made against him.

- a] 14.
- b] 16.
- c] 22.
- d] 24.

86] _____ disability means disability of the bones, joints or muscles leading to substantial restrictions of the movement of the limbs or any form of cerebral palsy.

- a] lokomotor.
- b] hearing.
- c] vocal.
- d] ocular.

87] Though the Directive Principles of State policy contained in the IV part of the Constitution of India are not _____, they require for the State to take into consideration while formulating State policy.

- a] justiciable.
- b] mandatory.
- c] obligation.
- d] necessary.

88] Article _____ of the Constitution of India deals with organisation of Village Panchayats.

- a] 38.
- b] 39.
- c] 40.
- d] 42.

89] Article _____ of the Constitution of India deals with promotion of international peace and security.

- a] 48.
- b] 49.
- c] 50.
- d] 51.

90] As provided in _____ Article of the Convention on the elimination of all forms of discrimination against women State parties shall accord to women equality with men before the law.

- a] 14.
- b] 15.
- c] 16.
- d] 17.

91] Article _____ of U.N.O. Declaration on Children's Human Rights deals with sexual exploitation.

- a] 28.
- b] 30.

c] 32.

d] 34.

State True or False :

92] Children are included in vulnerable group.

True.

93] The International Year of Disabled Persons 1981 was celebrated in the same year.

False.

94] India has adopted Uniform Civil Code in 2002.

False.

95] Article 48 of the Constitution of India deals with organisation of agricultural and animal husbandry.

True.

96] In the field of human rights, prisoners are the most oppressed class.

True.

97] The *Dalits* are a part of the human race and accordingly they are entitled to the right of equality.

True.

98] A major policy declaration on elimination of discrimination against women was adopted in 1970.

False.

99] In 1993, the General Assembly of U.N.O. adopted unanimously a resolution regarding elimination of atrocities against women.

True.

100] The General Assembly of U.N.O. adopted Declaration on the Rights of the Child on 20th Dec. 1959 on the basis of the Geneva Declaration, 1924.

False.

101] U.N.O. Declaration on Children's Human Rights was adopted by General Assembly of the UNO on 20th Nov 1989.

True.

102] Accused deserve no human rights.

False.

103] Mental illness means any mental disorder other than mental retardation.

True.

104] Article 51 of the Constitution of India deals with promotion of International peace.

True.

105] Rights provided under the Directive Principles of State Policy are justiciable.

False.

106] Article 21 of the Constitution of India is a great safe-guard to human life.

True.

Answer in not more than two sentences :

107] When was Slavery Convention signed ?

Answer : The Slavery Convention was signed on 25th September, 1926.

109] What are the acts atrocities ?

Answer : Physical, sexual or mental harassment, which may include cruelty, sexual exploitation, etc. are the acts of exploitation.

110] What is Geneva Declaration, 1924 ?

Answer : Under the auspices of the League of Nations was held a convention on Children's Rights in Geneva in 1924, which enunciated five resolutions regarding children's rights and the same is known as Geneva Declaration.

111] When was UNO Declaration on Children's Rights adopted by the General Assembly of the UNO ?

Answer : UNO Declaration on Children's Human Rights was adopted by the General Assembly of the UNO on 20th Nov., 1989.

112] Where was Declaration of the Rights of Mentally Retarded Persons was adopted ?

Answer : Declaration of the Rights of Mentally Retarded Persons was adopted in 1971.

113] Mention a point which contained in the Declaration on the Rights of Disabled Persons, 1975 ?

Answer : Among other points, this Declaration contained that disabled persons have the same civil and political rights as other human beings.

114] What does the right to survival include ?

Answer : The right to survival includes right to health, nutrition, sufficient standard of living, name and nationality.

115] What is meant by right to protection ?

Answer : Right to protection includes right to protection against all forms of exploitation, cruelty, inhuman and insulting treatment and negligence in emergency, and in armed conflict a child has a right to special protection.

116] How many States ratified UNO Declaration of Children's Human Rights till January, 1994 ?

Answer : Till January, 1994, 154 States ratified the U.N.O. Declaration on Children's Human Rights.

117] What are the human rights of minorities ?

Answer : Freedom of Religion (Article 18), Freedom of Expression (Article 19), Freedom of Assembly (Article 20), Freedom of Education (Article 26) and Freedom to Participate in cultural life (Article 27) are the rights provided to minorities.

118] When has the General Assembly of the U.N.O. accepted two declarations on the rights of the disabled and what are those declaration ?

Answer : The General Assembly of the U.N.O. accepted two declarations on the rights of the disabled, which may be stated as follows :

- a) The Declaration on the Rights of Mentally Retarded Persons, 1971; and.
- b) Declaration on the Rights of the Disabled Persons, 1975.

119] Mention two fundamental duties of a citizen of India.

Answer : Among others, the following are the fundamental duties of citizens of India :

- a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem; and
- b) To cherish and follow the noble ideals which inspired our national struggle for freedom.

120] State the ruling of the Supreme Court in the case of Rural Litigation & Entitlement (AIR,1985, S.C. 652).

Answer : This is one of the most important cases relating to environmental protection decided by the Supreme Court, in this case the Court held the right to environment is the fundamental right.

121] State environmental measures.

Answer : The State Government and Statutory Bodies or Authorities should take necessary steps to prevent environment and attack the causes of environmental degradation.

122] What is the ruling of the Supreme Court in the case of Indian Council for Environment Legal Action v/s. Union of India (Air, 1996 (2) JT (SC) 196 ?

Answer : Supreme Court held that the "Polluter Pays" principle as a sound principle.

123] Match the following :

Group 'A'

Group 'B'

- | | |
|--|--|
| 1] Children. | 1] General Assembly Resolution 640 (VII) 20 th Dec; 1952. |
| 2] Declaration on the Elimination of Discrimination Against Women. | 2] General Conference of the UNESCO, 14 th Dec., 1960. |
| 3] Resolution of the General Assembly of UNO in 1993 | 3] 1975. |
| 4] Human Rights of Children. | 4] Article, 45 of the Constitution of India. |
| 5] Declaration on the rights of the child, 1959 | 5] Article, 44 of the Constitution of India. |
| 6] UNO Declaration on Children's Human Rights. | 6] Article, 43 of the Constitution of India. |
| 7] Equality before law. | 7] Article, 39-A. |
| 8] Human Rights of Disabled. | 8] Adopted of the Declaration by the General Assembly of UNO in 1975. |
| 9] Equal Justice and Free Legal Aid. | 9] Article 14 Constitution of India. |
| 10] Living wages etc. for workers. | 10] Adoption of the Declaration by the General Assembly of U.N.O. on 20 th Nov. 1989. |
| 11] Uniform Civil Code for all citizens. | 11] General Assembly of the U.N.O. adopted declaration on 20 th Nov; 1959. |
| 12] Provision for free and compulsory education for children. | 12] The Geneva Declaration, 1924. |
| 13] Declaration on the rights of Disabled Persons. | 13] Elimination of atrocities against women. |
| 14] Convention Against Discrimination in Education. | 14] Adoption of this policy by the General Assembly on 7 th Nov. 1967. |
| 15] Convention on the political rights of women. | 15] One of the vulnerable group in the society. |

Answers:

Group 'A'	=	Group 'B'
1.	=	15.
2.	=	14.
3.	=	13.
4.	=	12.
5.	=	11.
6.	=	10.
7.	=	9.

- | | | |
|-----|---|----|
| 8. | = | 8. |
| 9. | = | 7. |
| 10. | = | 6. |
| 11. | = | 5. |
| 12. | = | 4. |
| 13. | = | 3. |
| 14. | = | 2. |
| 15. | = | 1. |

3) HUMAN RIGHTS IN INTERNATIONAL LAW :

Tick the correct option :

124] Who among the following is called as father of International Law ?

- a] Pufendrot.
- b] Hugo Grotius.
- c] Bynkerhock.
- d] Vattel.

125] Manroe Doctrine was announced in the year –

- a] 1798.
- b] 1805.
- c] 1815.
- d] 1823.

126] Who is author of Peaceful co-existence ?

- a] Chao-en-lai.
- b] Pt. Jawaharlal Nehru.
- c] Dalai Lama.
- d] John Kennedy.

127] Below are given characteristics of neutralised state amongst which, there is one which is not a characteristic of such state Point out the same.

- a] A Collective Act.
- b] A neutralised state to give its consent .
- c] Neutralisation a permanent status.
- d] Occasional interference in the affairs of other States.

128] Below are some of neutralised State. Among them, there is one which is not an obligation of such a state. You are required to point out the same.

- a] Not to engage in hostilities except to defend itself.
- b] Not to involve infringements involving risk of hostilities.
- c] Not to involve in non-political conventions.
- d] To obey the rules of neutrality during war between other States.

129] According to which of the following theories, law is a command issued by the state ?

- a] Natural Law Theory.
- b] The Positive Law Theory.
- c] The Theory of Legal Realism.
- d] The Idealistic Theory of Human Rights.

130] Freedom to form Association or Unions is subject to certain restrictions as laid down in Article 19 of the Constitution of India. Among the restrictions given below one is such which does not pertain to this freedom. Point out the same.

- a] Sovereignty and integrity of India.
- b] Public order.
- c] Morality.

d] Friendly relations with foreign States.

131] Various theories of Human Rights are given below. Among them is one theory which is not related with Human Rights. You are required to point out the same.

- a] Natural Law Theory.
- b] The Positive Law Theory.
- c] The Social Contract Theory.
- d] Idealistic Theory of Human Rights.

132] The International Labour Organisation (ILO) was established in the year -

- a] 1918.
- b] 1919.
- c] 1924.
- d] 1947.

133] With regard to Human Rights of Women, the General Assembly has passed certain Resolutions as given below. However, among the following Resolutions of the General Assembly, there is one Resolution which is not concerned with Human Rights of women, which you are required to point out.

- a] Equal Remuneration convention general conference of the ILO, 34th session 29th June, 1951.
- b] Discrimination (Employment) convention general conference of the International Labour Organisation, 42nd session, 25th June, 1958.
- c] Convention against Discrimination in Education general conference of the UNESCO, 14th Dec, 1960.
- d] The Geneva Declaration, 1924.

134] Which of the following Articles of the Constitution of India is associated with Human Rights of the accused ?

- a] Article 18 of the Constitution of India.
- b] Article 20 of the Constitution of India.
- c] Article 22 of the Constitution of India.
- d] Article 24 of the Constitution of India.

135] In respect of handicapped people, certain provisions have been made under the Act, 1955 and accordingly, the State is under an obligation to do certain things given below. However, among those things there is one which is not concerned with these matters. You are required to point out the same.

- a] To identify and prevent handicapped-ness.
- b] To protect the educational rights of handicapped people.
- c] To provide social security.
- d] To provide right of family benefit.

136] The world summit for children has made declaration containing certain programmes given below. Among which there is one which is not included among them. Point out the same.

- a] Programmes attaining optional growth and development in child-hood.
- b] Programme for promoting the role and status of women and reputable family planning.
- c] Programme for enhancement of role of the family is upbringing of the child.
- d] To provide social security.

137] Below are given some economic and commercial associations, amongst which there is one Political Association. You are required to point out the same.

- a] Common Market.
- b] European free trade Association.
- c] Organisation of American States.
- d] Latin American Free Trade Association.

138] The following are some of the principles of peaceful co-existence (*Panch-sheel*), amongst which there is a principle which does not belong the principles of peaceful co-existence. Point out the same.

- a) Mutual non-aggressing.
- b) Equality and mutual benefit.
- c) Mutual trade agreements.
- d) Peaceful co-existence.

Fill in the Blanks :

139] The Congress of Vienna of _____ marks the beginning of International legislation.

- a) 1815.
- b) 1850.
- c) 1870.
- d) 1890.

140] The Maritime law convention of _____ of 1856 formulated rules for the guidance of states when engaged in sea-warfare.

- a) Paris.
- b) Shanghai.
- c) London.
- d) Rome.

141] The _____ Conference of 1899 called at the instance of the Zar of Russia had, as its preliminary object, the promotion of a general limitation of amendments.

- a) Hague.
- b) Washington.
- c) New York.
- d) Paris.

142] The first school of international law was composed of the –

- a) Naturalists.
- b) Grotians.
- c) Positivists.

143] The principles of peaceful co-existence were announced in the year –

- a) 1908.
- b) 1909.
- c) 1936.
- d) 1954.

144] The Universal Declaration of Human Rights was adopted by the United Nations General Assembly on –

- a) 15/6/1928.
- b) 18/8/1930.
- c) 10/12/1948.
- d) 5/6/1954.

145] The Positive Theory of Law was founded by –

- a) Locke.
- a) Austin.
- c) Marx.
- d) Stalin.

146] Article _____ of the Universal Declaration of Human Rights says that every person is entitled to such social and international system in which all the rights and freedoms are made available to him fully.

- a) 15.

b] 18.

c] 24.

d] 28.

147] Everyone who is arrested shall be informed, at the time of his arrest, of ____ of charges against him.

a] reasons.

b] charges.

c] accusation.

148] Article 25 provides that every citizen shall have the right and an opportunity without any of the distinctions mentioned in Article ____ and without unreasonable restrictions as specified in Article 25 referred to above.

a) 2.

b) 5.

c) 8.

d) 20.

149] Any propaganda for war shall be ____ by law as provided in Article 20 of the International Covenant on Civil and Political Rights, 1966.

a) prohibited.

b) prevented.

c) disallowed.

d) banned.

150] Magistrate's permission is required to keep a person in custody beyond a period ____.

a) 4 hrs.

b) 8 hrs.

c) 30 hrs.

d) 24 hrs.

151] Article 24 of the International Convention on the Elimination of all forms of Racial Discrimination, 1966 declares that no child below the age of ____ years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

a) 8 yrs.

b) 12 yrs.

c) 14 yrs.

d) 16 yrs.

152] General Assembly has adopted the Convention on the Prevention and Punishment of the Crime of ____ in 1948.

a) genocide.

b) homicide.

c) pesticide.

d) murder.

153] The Slavery Convention was signed on ____.

a) 25/9/1926.

b) 14/8/1947.

c) 25/12/1961.

d) 28/8/1976.

State True or False :

154] The National Human Rights Commission has all the powers of a Civil Court.

True.

155] It has come to notice of the judiciary that the tool of the Public Interest Litigation (CPIR) has been used very freely, and sometimes misused also.

True.

156] The protection of Human Rights act, 1993 extends to the whole of India except the state of Jammu & Kashmir.

False.

157] The Chairperson and other members of the National Human Rights Commission shall be appointed by the Vice-President of India.

False.

158] A person appointed as Chairperson of the Human Rights Commission shall hold office for the term of five years from the date on which he enters on his office or until he attains the age of seventy years, whichever is earlier.

True.

159] One of the members of State Human Rights Commission is the Chief Minister of the State.

False.

160] Section 36 of the Protection of Human Rights Act, 1993 specifies the matters which are not subject to jurisdiction of the Commission.

True.

161] All persons are equal before law and hence, they are entitled to equal before law and hence, they are entitled to equal protection of law.

False.

162] The Commonwealth of Nations (British) is neither super state nor a Federation, it is just an association of free and equal States.

True.

163] A neutralised state can defend a particular State it likes to defend.

False.

164] NATO states are neutral States.

False.

165] It is the common will of the states that forms the source of International Law.

True.

166] During the middle-ages, climate was favourable for the development of International Law.

False.

167] International Law is mainly a system regulating the rights and duties of states *inter se*.

True.

168] China is a permanent member of the Security Council of the United Nations Organisation (UNO).

True.

Answer in not more than two sentence :

169] According to Oppenheim, what are the requisites of International Law ?

Answer : According to him, the International Law has the following three important requisites –

1. a community.

2. a body of rules for human conduct, and

3. consent of that community for the enforcement of those rules by external power.

170] What are the schools of International Law ?

Answer : The International Law has the following Schools –

a) Naturalist; b) Positivist; c) Grotian.

172] What are the co-relative duties of states ?

Answer : The State has the following co-relative duties –

- a) Duty not resorting to war;
- b) Duty of carrying out treaty obligations;
- c) Duty not of interfering in the affairs of other States.

173] State one of the cases in which intervention is permitted under International Law ?

Answer : Intervention is permitted or intervention is considered legitimate in collective intervention pursuant to the Charter of United Nations.

174] Is there any impact of the principle of peaceful co-existence ?

Answer : Yes, three doctrine of peaceful co-existence has found expression in several treaties, such as, the Declaration adopted by the U.N. General Assembly on 14th December, 1957 and the Final Communication of the Afro-Asian Conference, held in Indonesia in April, 1955.

175] Is state justified in conducting nuclear tests ?

Answer : In modern times, defence requirements demand such tests. Even a country like India, which is always champion of peace has had to develop nuclear weapons, though for defence purpose, and as such nuclear tests have become part of defence requirements.

176] What are the characteristics of neutralisation ?

Answer : the following are the characteristics of neutralisation –

- a) a collective act.
- b) a neutralised State to give consent.
- c) neutralisation permanent status.

177] What is a SEATO ?

Answer : SEATO is a defence alliance, known as, “the South East Asia Treaty Organisation”, which came into existence in 1959.

178] What is meant by Human Rights ?

Answer : The term ‘Human Rights’ denotes all those rights which are inherent in human nature and without which human beings cannot live human beings as such.

179] What is stated in Article 1 of the Universal Declaration of Human Rights, 1948 ?

Answer : Article 1 of the Universal Declaration on Human Rights, 1948 states that, – “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 and brotherhood”.

180] How are Human Rights classified by Karel Vasak, an eminent French jurist ?

Answer : Karel Vasak, an eminent French juris has classified Human Rights as under –

- a) Civil and Political Rights;
- b) Economic, Social and Cultural Rights; and
- c) Solidarity Rights.

181] What is a relief to a person who has been the victim unlawful arrest or detention ?

Answer : As provided in Article 9 (5) of the International Covenant on Civil and Political Rights, 1966, any person, who has been the victim of unlawful arrest or detention would have an enforceable right to compensation.

182] When was the International Covenant on Economic, Social and Cultural Rights, 1966 adopted ?

Answer : The International Covenant on Economic, Social and Cultural Rights, 1966 was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16th December, 1966.

183] When was the first session of ECOSOC (Economic and social Council) was held ?

Answer : The first session of the ECOSOC (Economic and social Council) was held in 1946.

184] What does the Amnesty International insist on ?

Answer : The Amnesty International insists that all states should accede to, and implement the 1951 Convention relating to the status of refugees and implement its 1967 protocol.

Objective Questionnaire / Abbreviations
on
PUBLIC INTERNATIONAL LAW
&
HUMAN RIGHTS
With Solutions

- 185] ICCPR = International Covenant on Civil and Political Rights.
- 186] ICESCR = International Covenant on Economic, Social and Cultural Rights.
- 187] CEDAW = International Covenant on Elimination of All Forms of Discrimination Against Women.
- 188] ICERD = International Convention on the Elimination of All Forms of Racial Discrimination.
- 189] CAT = Convention Against Torture and other inhuman or degrading treatment or punishment.
- 190] CRC = Convention on the Rights of the Child.
- 191] i. ICCPR]
ii. ICESCR]
iii. CEDAW] are the six core international standards encompassing Human Rights, together with UDHR as the primary declaration.
iv. ICERD]
v. CRC]
vi. CAT]
ICCPR is called first generation rights as are immediately realizable.
ICESCR is called second generation rights as they are progressively realizable.

Answer in not more than two sentences :

- 192] Who is the Chairman of National Human Rights Commission (NHRC) ?
a) A person who has been the Chief Justice of the Supreme Court of India.
b) A person who is the Chief Justice of the Supreme Court of India.
c) A person who has been the Chief justice of a High Court of India.
d) An eminent sitting member of the Parliament of India.
[The answer is (a)]
- 193] Who is the Chairman of State Human Rights Commission (SHRC) ?
(a) A person who has been the Chief Justice of a High Court India.
(b) A person who is a justice of the Supreme Court of India.
(c) A person who has been a District Judge in that State.
(d) An eminent sitting member of the Legislative Assembly of that State

[The answer is (a)]

194] When the Protection of Human Rights Act, 1993 came into force ?

Answer : 28th September, 1993.

195] The limitation period for inquiring into matters of human rights violation is ____ year/s from the date on which the act constituting the violation is alleged to have been committed.

- a) one year .
- b) two years.
- c) three years.
- d) four years.

196] In the Protection of Civil Rights Act, 1955, Civil Rights means any rights accruing to a person by reason of the abolition of untouchability by Article ____ of the Indian Constitution.

Answer : Article 17.

197] Identify the one who is not a deemed member of NHRC ?

- (a) Chairperson of the National Commission for Minorities.
- (b) Chairperson of the National Commission for SCs. and STs.
- (c) Chairperson of the National Commission for Women.
- (d) Chairperson of the National Law Commission.

198] India is a signatory to the two Optional Protocols to ICCPR.

Yes or No ?

The answer is No.

199] The treaty monitoring body set up under Part IV Art 28 of ICCPR is called the ____.

Answer : Human Rights Committee.

200] ____ Justice of India is a member of the treaty monitoring body of ICCPR, namely, the Human Rights Committee.

Answer : Justice P.N.Bhagwati.

201] The treaty monitoring body of ICESCR established by ECOSOC is called the ____.

Answer : Committee on Economic, Social and Cultural Rights.

202] Name any two of the specialized institutions set-up in India to give effect to ICCPR.

Answer : They are:

- (a) National Human Rights Commission.
- (b) State Human Rights Commission.
- (c) Human Rights Court.
- (d) National Commission for Minorities.

203] The treaty monitoring body of ICCPR namely the Human Rights Committee consists of how many members.

Answer : 18 members.

204] Which was the first Human Treaty ?

Answer : The Slavery Convention in 1926, heralded the first human rights treaty.

205] What were the four freedoms outlined in the speech of President Roosevelt in 1941 ?

Answer : They are:

- (a) The first freedom of speech and expression;
- (b) The second freedom of every person to worship God;
- (c) The third freedom from wants;
- (d) The fourth freedom from fear;

206] The UDHR provides for private ownership of property as a human right, whereas, Articles in ICCPR and ICESCR are silent about this human right.

Yes or No ?

Answer : Yes. Article 17 of The Universal Declaration on Human Rights states that everyone has the right to own property. In contrast to this, ownership of property is NOT a human right in both the Covenants i.e. ICCPR and ICESCR.

207] ILO =

Answer : International Labour Organization.

208] On which day of every year is marked as the International Human Rights Day ?

Answer : 10th December.

209] When is the United Nations Educational, Scientific and Cultural Organization (UNESCO) was founded ?

Answer : on 16th November, 1945.

210] What is UNESCO's goal ?

Answer : UNESCO's goal is to build peace in the minds of men.

211] UNICEF =

Answer : United Nations Children's Fund.

212] Which of the following is not a source of International Law ?

- a) Custom and usages.
 - b) Treaties.
 - c) Decision of Court and Tribunals.
 - d) Religious edicts.
 - e) The general principles of law recognized by civilized countries.
- [Answer is (d) Religious edicts]

213] Private International Law is also called as _____.

Answer : Conflict of Laws.

214] Which is the Seat of the International Court of Justice ?

Answer : The seat of the International Court of Justice is the Hague.

215] What is the main aim of the Food and Agriculture Organisation ?

Answer : Food and Agriculture Organization [FAO] of the United Nations aims to build a world without hunger.

216] Human rights are universal, inalienable and indivisible.

217] **Name any three recognized modes of acquiring territory by an existing State ?**

Answer : The recognized modes are :

Occupation.

Accretion.

Annexation.

Prescription.

Cessation.

Lease.

Pledge.

Award.

218] **Name the four rights of the State ?**

Answer : The four rights of the State are :

Right to Independence.

Right to Equality.

Right to Territorial Supremacy.

Right to Self-Defence.

219] **What does Chapter VII of the UN Charter stand for ?**

Answer : Chapter VII of the Charter refers to 'action with respect to threats to the peace, breaches of the peace, and acts of aggression'.

220] **Name any 4 peaceful means of settlement of international disputes ?**

Answer : The various peaceful means of settlement are :

(a) Negotiation.

(b) Good Offices.

(c) Mediation.

(d) Conciliation.

(e) Enquiry.

(f) Arbitration.

(g) Judicial settlement.

(h) Settlement under auspices of the UNO.

221] **What are the two theories of recognition of a State?**

Answer :

They are –

(a) Constitutive Theory; and (b) Declaration Theory.

222] **What are the four fundamental principles of the Convention on Rights of the Child ?**

Answer :

The four principles are :

(a) Respect for the Child's opinion. It means that a child has various freedoms.

(b) Each child has rights equal in value as an adult. Thus entitles no discrimination.

(c) Each child has equal value as a human being Implies right to enjoy childhood.

(d) Principle of best interest of the child balances the need for protection of children while respecting them.

223] Name three non-derogable rights enshrined in ICCPR ?

Answer :

ICCPR states that certain rights cannot be suspended even under a state of Emergency. They are –

The right to life.

Prohibition against torture.

Prohibition against slavery and servitude.

Prohibition against imprisonment for failure to fulfil contractual obligation.

Prohibition against enacting penal laws with retrospective effect.

The right to recognition as a person before law.

The freedom of thought, conscience and religion.

224] Name any three specialized agencies of the United Nations.

Answer :

1. The International Labour Organization [ILO].
2. Food and Agriculture Organization [FAO].
3. World Health Organization [WHO].
4. United Nations Educational, Scientific and Cultural Organization [UNESCO].
5. United Nations Industrial Development Organization [UNIDO].

225] State any three salient points referred in the Preamble of the U.N. Charter.

Answer :

- a. Reaffirm faith in fundamental human rights.
- b. In dignity and worth of the human person.
- c. In equal rights for man and women.
- d. In equal rights for Nations-large and small.
- e. Establish conditions of justice and respect for obligations arising from treaties.
- f. Promote social progress and better standards of life in larger freedom.

"Human Rights and Public International Law"**UNIVERSITY EXAMINATION QUESTION PAPER*****Revised Course*****According to Objective Question Paper Pattern****Question Papers [1] to [7]****Time : 3 Hours****Marks : 100.****[1]****[April, 2005]*****With Solutions*****N.B.**

1. Answer Section I in the question paper itself.
2. Section I will be collected at the end of the first hour of the examination.
3. Answer all questions.

SECTION – I (40 Marks) :

Q. I : In case of multiple choice questions **only one option is correct**. Tick mark the **correct option** in the box provided. Fill in the blanks. Other questions shall be answered in **one sentence**.

1. Doctrine of *pacta sunt servanda* is _____ doctrine.
 - a) Roman.
 - b) French.
 - c) English.
2. The source of municipal law is _____ and custom.
 - a) usage
 - b) legislative enactment
 - c) excise
3. Public International Law deals with –
 - a) State.
 - b) Public of Nation.
 - c) Relation of States.
4. Organisation of the Petroleum Exporting Countries (OPEC) is a –
 - a) Bilateral Treaty.
 - b) Multilateral Treaty.
 - c) Plurilateral Treaty.
 - d) None of the above.

5. "Custom is the original and oldest source of International Law and at the time it was the most important amongst the sources".
- a) True.
b) False.
6. _____ is the main international judicial tribunal.
- a) Court.
b) International Court of Justice.
c) International Tribunal.
7. Recognition of state is necessary for –
- a) seeking approval of other states.
b) establishing mutual relationship for seeking approval of other states.
c) None of these
8. *De fact* recognition means –
- a) Recognition in fact.
b) Recognition in law.
c) None of these.
9. The International Court of Justice is the Principal Judicial Organ of U.N. It was established in the year –
- a) 1945.
b) 1946.
c) 1948.
10. Settlement of disputes by peaceful means is one of the Principles of United Nations.
- a) True.
b) False.
11. "Individual is not a subject of International Law".
- a) True.
b) False.
12. The OHCHR maintains an office at the Head Quarter which is called –
- a) Tokyo Office.
b) New York Office.
c) United Kingdom Office.
d) Swiss Office.

13. UNESCO stands for _____.

Answer : United Nations Educational, Scientific and Cultural Organisation.

14. The International Bill of Human Rights, means –

Answer : UDHR, two Covenants – ICPR and ICESCR, two optional protocols to above including abolition of death penalty.

15. To say that International Law is binding as a priori assumption, "Pacta Sunt Servanda" was suggested by –
- a) Anzioloti.
b) Lauterpacht.
c) Briggs.
d) Brierly.
16. Legislative procedure in international sphere is different from its counterpart within the states. International Law is made through –
- a) Treaties.
b) Negotiations.

- c) Verbal assurances.
 d) Letters written by state Ministers.
17. International Law was called the vanishing point of jurisprudence, by –
 a) Austin.
 b) Holland.
 c) Moser.
 d) Zouche.
18. Jurists have expressed doubts regarding the true nature of International Law. "To ask whether International Law is a law....., is really to ask at least two questions. One is, what is the correct concept of law?" The other is – "Do the characteristics of International Law fall within that concept?". Who expressed this view?
 a) Holland.
 b) Kelsen.
 c) Julius Stone.
 d) None of these.
19. Who of the Constitutive Theorists said that, "a state is, and becomes an international person by recognition only and exclusively?"
 a) Oppenheim.
 b) Bentham.
 c) Holland.
 d) Jellinek.
20. UDHR was adopted by the General Assembly of United Nations on –
 a) Dec. 10, 1950.
 b) Dec. 10, 1948.
 c) Oct. 21, 1948.
 d) Nov. 10, 1972.
21. Match the following and tick the correct answer.
- | <u>Name of the Rights.</u> | <u>UDHR</u> |
|--|----------------|
| I. Equality before Law. | a. Article 9. |
| II. Protection of Life & Personal Liberty. | b. Article 7. |
| III. Freedom of Speech & Expression. | c. Article 4. |
| IV. Prevention of Slavery & Forced Labour. | d. Article 19. |

Answers :

- a) I-d. II-c. III-b. IV-a.
 b) I-b. II-a. III-d. IV-c.
 c) I-a. II-d. III-c. IV-b.
 d) I-c. II-b. III-a. IV-d.

22. Match the following and tick the correct answer.

<u>Name of the Rights.</u>	<u>Part-III of the Constitution of India.</u>
I. Protection of Life & Liberty.	a. Article 25 (1).
II. Freedom of Conscience of Rights.	b. Article 21.
III. Remedy for Enforcement of Fundamental Rights.	c. Article 20 (1)
IV. Protection in respect of Conviction of Offences.	d. Article 32.

Answers :

- a) I-a. II-d. III-b. IV-c.
 b) I-b. II-a. III-d. IV-c.
 c) I-c. II-b. III-d. IV-a.
 d) I-d. II-b. III-c. IV-a.

23. The Convention on Rights of the Child was adopted by the General Assembly by consensus on –

- a) Nov. 16, 1980.
- b) Nov. 20, 1989.
- c) Oct. 21, 1990.
- d) Dec. 10, 1948.

24. The Positive Commitment of the state Parties ignites legislative action at home, but does not automatically make the convention an enforceable part of the *corpus juris* of India, held in –

- a) Maneka Gandhi Case.
- b) Jolly George Varghese Case.
- c) Keshavanand Bharati Case.
- d) Golaknath Case.

25. Match the following and tick the correct answer.

<u>Name of the Rights.</u>	<u>Convention on Economic, Social & Cultural Rights</u>
I. Equal Pay for Equal Work.	a. Article 10 (2).
II. Maternity Relief.	b. Article 7 (a) (i).
III. Adequate Standard of Living.	c. Article 13 (1).
IV. Right to Child Education.	d. Article 11.

Answers :

- a) I-a. II-d. III-b. IV-c.
- b) I-b. II-a. III-d. IV-c.
- c) I-c. II-b. III-d. IV-a.
- d) I-d. II-b. III-c. IV-a.

26. On the recommendations of the Third Committee, the General Assembly, on December 16, 1966 adopted the two Covenants –

- a) ICCPR & CRC.
- b) CEDAW & ICESCR.
- c) ICCPR & ICESCR.
- d) CEDAW & CRC.

27. International Women's Day is –

- a) 8th March.
- b) 9th March.
- c) 10th March.
- d) None of the above.

28. The European Convention on Human Rights came into force on –

- a) Sept. 3, 1953.
- b) Oct. 30, 1952.
- c) Dec. 20, 1953.
- d) Nov. 15, 1952.

29. The National Commission on Human Rights (NCHR) was set up in India on –

- a) Oct. 27, 1994.
- b) Sept. 28, 1993.
- c) Sept. 10, 1992.
- d) Dec. 10, 1991.

30. "No one shall be subjected to torture or to cruel, inhuman or derogating treatment or punishment. Which Article of the UDHR, 1948 mentions this ?

- a) Article 9.
- b) Article 12.
- c) Article 5.
- d) Article 19.

31. The Universal Declaration of Human Rights, 1948, has –

- a) 30 Articles.
- b) 20 Articles.
- c) 29 Articles.
- d) 45 Articles.

32. Human Rights Day is celebrated on –

- a) 10th October.
- b) 10th November.
- c) 10th December.
- d) 10th January.

33. _____ shall constitute a body to be known as the National Human Rights Commission.

- a) UNO.
- b) Central Government.
- c) State.

34. The two broad sets of Human Rights affirmed in Universal Declaration are –

- a) Natural Rights – Fundamental Rights.
- b) Civil Rights – Society Rights.
- c) Civil Rights – Economic Rights.

35. U.N. Commission on Human Rights was established in –

- a) February, 1946.
- b) March, 1948.
- c) December, 1947.

36. Commission on the Status of Women was established in –

- a) 1946.
- b) 1947.
- c) 1948.

37. Which of the Article of the Constitution of India deal with Equal Justice and Free Legal Aids ?

- a) Article 39-A.
- b) Article 40.
- c) Article 19.

38. Right to Free Legal Aid is implicit in Article 21 of the Constitution of India, was held by the Supreme Court in which Case ?

- a) M.H. Hoskot v/s. State of Maharashtra.
- b) Hussainara Khatoon v/s. Home Secretary of Bihar.
- c) A.G. of India v/s. Lachmi Devi.
- d) None of the above.

39. The case of Hussainara Khatoon v/s. Home Secretary of Bihar, is related to –

- a) Free Legal Aid.
- b) Speedy Trial.
- c) Right against hand-cuffing.
- d) None of the above.

40. “Human Rights means the rights relating to life, liberty, equality and dignity of individual”, has been defined in –

- a) Section 2 (1) (e) of the Protection of Human Rights Act, 1993.
- b) Section 2 (1) (d) of the Protection of Human Rights Act, 1993.
- c) Section 2 (1) b) of the Protection of Human Rights Act, 1993.
- d) None of the above.

SECTION – II (60 Marks) :

Q. II : Answer Any Two : = (Marks 20).

- 1) Explain the concept of “treaty” and summarise the various kinds of treaties.
- 2) State and explain what are Human Rights. Critically examine the rights of the accused.
- 3) Define the Law of the Sea. Explain the terms, – ‘Territorial Water’, ‘Exclusive Economic Zone’, ‘Continental Shelf and High Seas’.

[Detail Answers to all the Questions above, and all the Questions in the foregoing question papers are given in this Book].

Q. III : Write short notes on Any Four : = (Marks 20).

- i. Right to Development.
- ii. Role of the Supreme Court in protecting Human Rights.
- iii. I.L.O.
- iv. Covenant on Political and Civil Rights.
- v. National Human Rights Commission.
- vi. Right to Environment.

[Detail Answers to all the short notes above, and all the short notes in the foregoing question papers are given in this Book].

Q. IV : Solve Any Two : = (Marks 20).

1) ‘X’, a suspect in an offence was brought by the police inspector in mid-night for interrogation. ‘X’ objected this attitude of the investigating officer and refused to answer.

a) Do you think that ‘X’ is justified in his act ?

Answers : Yes, he is justified in doing so. ‘X’, the suspect, has the right to silence and he cannot be forced to answer.

b) Had ‘X’ violated the law by not giving information asked for by the investigating officer ?

Answer : No, he has not violated any law by not giving information asked for by the investigating officer. Midnight interrogation is wrong, bad in law and violates the fundamental rights under Articles 20 (3) and 22 (1). ‘X’ cannot be forced to give replies.

c) What is the name of the Case ?

Support your answer giving reasons.

Answers : This problem is based on Nandini Satpathi v/s. P.L. Dani, Case. ‘X’, the suspect, has the right to silence and he cannot be forced to answer. Midnight interrogation is wrong, bad in law and violates the fundamental rights under Articles 20 (3) and 22 (1). ‘X’ cannot be forced to give replies.

2) Mr. ‘X’ was illegally detained in prison for over two years after his acquittal due to negligence of the jail authorities.

a) Is it Human Rights violation ?

Answers : Yes. This is a case of Human Rights violation.

b) Can ‘X’ seek help of the Court for injustice caused to him ?

Answer : Yes, ‘X’ can file habeas corpus petition and obtain relief and compensation for illegal detention.

c) What is the name of the Case ?

Answer : This problem is based on Rahul Shah’s Case – illegal detention violates Article 21 of the Constitution of India.

3) During the First World War, Mr. 'X', an officer of the State, killed a defenceless person in a life boat of the State 'N'. Mr. 'X' was arrested and charged for murder. Mr. 'X' pleaded for order of superior as a defence. Will Mr. 'X' succeed ? State reasons with Case Law.

Answers : No. Mr. 'X' will not succeed. Killing a defenceless person is universally known to be against law. Even if he was ordered by his superior, he will not get the protection of orders of superior, and will be punished for the crime committed by him.

This problem is based on *Liandoverly Castile Case*.

[2]

[November, 2005]

With Solutions

N.B.

1. Answer **Section I** in the question paper itself.
2. **Section I** will be collected at the end of the first hour of the examination.
3. Answer all questions.
4. In case of multiple choice questions **only one option is correct**. Tick mark the correct option in the box provided. Fill in the blanks. Other questions shall be answered in **one sentence**.

SECTION – I (40 Marks) :

Q. I :

1. _____ is the U.N. body established for codifying and progressively developing international law.

Answer : International Law Commission.

2. Which of the following statements about custom is correct ?
 - a) Custom is not recognised as a source of law by the I.C.J. statute.
 - b) In case of 'custom-treaty' inconsistency treaty will prevail.
 - c) When customary rules are codified into treaty form, such customs cease to exist.
 - d) Customs and treaties are the only sources of international law.
3. Asylum case is an authority, for which of the following –
 - a) Individual is the subject of international law.
 - b) Invasion of State territory is illegal.
 - c) Opinio juris shall be proved by the party who relies on custom.
 - d) Disputes shall be settled peacefully.
4. Which one of the following is the constituent of the territory of a sovereign state ?
 - a) Outer space.
 - b) Air space above its land.
 - c) Celestial bodies.
 - d) High see.

5. What is a land-locked State ?

Answer : A state which has no sea-coast.

6. Which one of the following statements is not true about declaratory theory ?
- a) Statehood is status conferred by the operation of international law.
 - b) Legal personality of state is independent of recognition by other states.
 - c) Act of recognition is a necessary precondition to the existence of the capacities of statehood.
 - d) Whether or not recognised, the states will be entitled to the rights and subject to the duties of the legal system.

7. What are the supplementary means of interpreting a treaty as laid down in the Vienna Convention ?

Answer : i) Travaux Preparatoires; ii) Circumstances of conclusion.

8. Match the following choosing the correct option -

A

B

i) *Pacta Sunta Servanda.*

1. Principles which all states must observe and their non-observance may affect the very foundation of the legal system to which they belong.

ii) *Pacta tertiis nec nocent nec prosunt.*

2. A treaty may be terminated if there occurs a fundamental change in the circumstances under which it was concluded.

iii) *Jus Cogens.*

3. Rights and obligations arising from the treaty, are binding only on the parties to a treaty and not on a third state without its consent.

iv) *Rebus sis stantibus.*

4. States are bound to fulfil in good faith, the obligations assumed by them under treaties.

i - 1; ii - 3; iii - 4; iv - 2.

i - 4; ii - 3; iii - 1; iv - 2.

i - 2; ii - 3; iii - 1; iv - 4.

i - 3; ii - 4; iii - 2; iv - 1.

9. Which of the following jurisdictions is possessed by I.C.J. ?

- a) Advisory.
- b) Appellate.
- c) Contentions jurisdiction on consent of State.
- d) (a) and (b).
- e) (a) and (c).
- f) (a), (b), (c).

10. What are the two '*res communis*' recognised by the Law of the Sea convention, 1982 ?

Answer : i) Deep sea bed; ii) High seas.

11. 'Caroline Case' is related to which of the following ?

- a) U.N.O. formation.
- b) Treaty termination.
- c) Fisheries Zone.
- d) Self defence.

12. Reservation shall be made in which of the following stages ?

- a) Negotiation.
- b) Ratification.
- c) Adoption of the next of the treaty.

d) Entry into force.

13. Which one of the following modes of acquisition of territory is not legal now ?

a) Occupation and prescription.

b) Cessation and treaty.

c) Conquest.

d) Accretion.

14. Tick the correct statement of the following –

a) U.N. prohibits use of force without any exception.

b) 'Just War Doctrine' did not recognise self defence.

c) 'Sovereign Right to resort war' did not prohibit use of force.

d) Covenant of League of Nations delegitimized use of force.

15. _____ is the friendly interference of a neutral nation in the controversies of others to help settlement.

Answer : Mediation.

16. The Chairperson of the National Human Rights Commission has to be –

a) sitting Judge of a High Court.

b) sitting Judge of the Supreme Court.

c) former Chief justice of the High Court.

d) former Chief Justice of the Supreme Court.

17. The N.H.R.C. and S.H.R.C. are established as per the –

a) Universal Declaration of Human Rights.

b) Stockholm Declaration.

c) Paris Principles.

d) The Constitution of India.

18. Human Rights Day is celebrated on –

a) 10th October.

b) 10th November.

c) 10th December.

d) 10th January.

19. What does the acronym U.N.C.E.F now stand for ?

Answer : United Nations Children's Fund.

20. The highest percentage of child labour is in –

a) Africa.

b) Asia.

c) South Africa.

d) Europe.

21. What modification was brought in by the optional Protocol to the International Covenant of Civil & Political Rights (1966) ?

Answer : Individuals claiming to be victims of violation of any of the rights in CCPR can prefer individual communications to the International Human Rights Committee.

22. As per the Supreme Court judgment delivered by Justice K. G. Balkrishana and Justice Shrikrishna, the life imprisonment in India means _____.

Answer : Imprisonment for the rest of the life.

23. Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 has provided punishment upto _____ or fine upto Rs. _____ or both, to one who employs or permits any child in contravention of provisions of Section 3.

Answer : One Year; Rs. 20,000/-.

24. Under Section 2 of the Protection of Human Rights Act, human rights include _____.

Answer : Rights relating to life, liberty, equality and dignity of the individual enforceable in India.

25. Right to Life does not include Right to Die. It was decided in the following case –

- a) Hussainara khatoon v/s. ome Secretary, Bihar.
- b) Sheela Barse v/s. State of Maharashtra.
- c) Gian Kaur v/s. State of Punjab.
- d) A.K. Gopalan v/s. State of Madras.

26. Untouchability is abolished its practice is punishable according to the following Article of the Indian Constitution –

- a) Article 15.
- b) Article 15 (4).
- c) Article 16.
- d) Article 17.

27. In the case of People's Union for Democratic Rights v/s. Union of India –

- a) Article 21 envisages right to speedy trial.
- b) Non-payment of minimum wages is violative of Article 23.
- c) Right to live includes right to sweet water.
- d) None of the above.

28. The clemency of capital punishment is granted by –

- a) President of India.
- b) Chief Justice of India.
- c) Prime Minister of India.
- d) Parliament.

29. The eleven norms to be observed regarding arrest of a person were laid down by the Supreme Court in the case –

- a) Joginder Kumar v/s. State of Haryana.
- b) State of M.P. v/s. Shamsunder Trivedi.
- c) D.K. Basu v/s. State of West Bengal.
- d) Afzal v/s. State of Haryana.

30. Which one of the following human rights activist not awarded the Nobel Peace Prize ?

- a) Nelson Mandela.
- b) Martin Luther King Jr.
- c) Valcav Havel.
- d) Mahatma Gandhi.

31. India is a signatory to the International Covenant on Civil and Political Rights, 1966, but it has not ratified clause 5 of Article 9. What does Article 9 (5) provide for ?

Answer : It provides for an enforceable right to compensation for victims of unlawful arrest or detention.

32. Decisions of N.H.R.C. are appealed in –

- a) Sessions Court.

- b) High Court.
c) Supreme Court.
d) None of the above.
33. Which former Judge of the Supreme Court is popularly known as the Green Judge ?
a) Justice Krishna Iyer.
b) Justice Chandrachud.
c) Justice Kuldeep Singh.
d) Justice Bhagwati.
34. The Chairman of the committee nominating members of the State Human Rights Commission is –
a) State Law Minister.
b) State Home Minister.
c) Chief Minister.
d) Governor.
35. Right to strike is recognised in which of the following instruments ?
a) CESCR.
b) CCPR.
c) Indian Constitution.
d) None of the above.
36. Participation of workers in the management is recognised in which of the following instruments ?
a) UDHR.
b) CESCR.
c) Indian Constitution.
d) None of the above.
37. Supreme Court decision in _____ (give name of the case) resulted in the establishment of the Backward Classes Commission.
Answer : Indira Sawhney v/s. Union of India (Mandal Commission Case).
38. International Commission on Human Rights is established by –
a) ECOSOC.
b) General Assembly.
c) International Human Rights Committee.
d) Organisation of American States.
39. Which one of the following rights cannot be inferred from Article 21 of the Indian Constitution ?
a) Right against inhuman treatment.
b) Right to privacy.
c) Right to form associations.
d) Right to speedy trial.
40. Derogation from Human Rights obligations during emergency is allowed, in which of the following ?
a) CCPR.
b) CESCR.
c) Rights of a Child Convention.
d) CEDAW.

SECTION – II (60 Marks) :

Quote relevant legal provisions and case laws wherever necessary.

Q. II : Answer both the questions :

= (20 marks).

1. (A) Discuss the law relating to -

a) Exclusive Economic Zone.

Answer :

New regime under LOS Convention, 1982; Definition and extent (200 nautical miles);

Rights of coastal states;

Rights of other states.

b) Territorial Sea.

Answer :

Territorial Sea Convention;

LOS Convention, 1982;

Definition and extent (Earlier 'Cannon Shot Rule');

Rights and duties of coastal states;

Sovereignty - Rights of other states.

OR

1. (B) "In addition to the imposition of duties and responsibilities on individuals, international law also grants personality in the form of rights". - Substantiate the statement with proper illustrations from the development of international law.

Answer :

Legal personality of individuals :

Duties and responsibilities

Piracy - War crimes - Slave trade - Apartheid - Genocide - Taking of hostages, hijacking - Duty to respect rights of others - Duty to contribute under Development Resolution - Drug trafficking - Duty towards environment under Stockholm and Rio Declarations International Court.

Personality in the form of rights

Human rights UN Charter - CCPR, CESC, CEPAW, CRC etc.

Rights of Diplomats, Astronauts - Procedural capacity before European Human Rights Court, American Human Rights Courts - UN Administrative Tribunal - ILO.

2. (A) Write an essay on "Human Rights & Women". Are laws in India adequate to protect their human rights ?

Answer :

Names of some Acts related to women and Case law are expected :

The role played by U.N. Charter on women;

Commission on the Status of Women, 1946;

UDHR and women;

CEDAW;

International Bill on Human Rights and women;

Optional Protocol to the Convention on women;

Conference on women: Beijing Conference, 1995;

Indian Constitution on women;

Role of Supreme Court in upliftment of women;

Laws are more or less adequate in India to protect the human rights of women. It is the implementation of these laws that is faulty;

Men must take steps to treat women with respect and dignity;

Vishakha v/s. State of Rajasthan; Nelabati Behere v/s. State of Orissa.

OR

2. (B) Critically examine the rights of the accused.

Answer :

Supreme Court has played a pivotal role in giving rights to the accused. Hence Case Law is very important –

- a) Judicial reforms as far as provisions and their rights are concerned, have been slow in India;
- b) Justice Mr. Krishna Iyer has been the greatest exponent of accused and prison reforms;
- c) In India the concept of giving accused the protection of human rights was absent;
- d) Police and jail authorities do not believe in the right to dignity or even right to life. Hence, 3rd degree torture and custodial deaths;
- e) India should follow the Ontario Scheme where there is no arrest on suspicion but the police issue an appearance notice;
- f) Supreme Court : Right to life includes the right to live with human dignity and all that goes with it;
- g) Judicial Activism/Judicial Creativity;
- h) D.K. Basu v/s. State of West Bengal : Supreme Court laid down rules to be observed regarding arrest of a person;
- i) State of Maharashtra v/s. Prabhakar Sanzgiri : Right to write and publish a book;
- j) Sunil Batra v/s. Delhi Administration : Relief against solitary confinement;
- k) Hussainara Khatoon v/s. State of Bihar : 1) Release of accused on bail or personal bond. 2) Right to legal aid;
- l) Gulam Sarwar v/s. U.O.I. : Principles of *Res Judicata* are not applicable to Habeas Corpus Cases;
- m) Afzal v/s. State of Haryana : 4th degree torture is prohibited, i.e. family members of a suspect cannot be tortured or detained;
- n) Madhukar Jambhale's Case : Censorship of mail to prisoners is prohibited;
- o) Veena Sethi's Case : Mentally disturbed prisoners should be treated as patients;
- p) State of M.P. v/s. Sham Sunder Trivedi : Compensation to the family of victims;
- q) Supreme Court : There should be transparency in police action and accountability of the police;
- r) The reservation by India on Article 9 (5) to CCPR is no longer valid.

[Detail Answers to all the Questions above, are given in this Book].

Q. III : Write short notes in not more than 10 sentences. Each carries 5 marks:=20.

Answer any One :

1. Sovereign Equality of states.

Answer :

- Fundamental principles of International Law;
- Article 2 (1) of U.N. Charter – governing principle;
- U.N. – General Assembly reflects SES, whereas, State Council does not – Criticism – U.N. does not reflect contemporary international society;
- Advantages – Protection of weak states infuses fairness in International Law.

2. Inquiry and Conciliation.

Answer :

- Peaceful means of settlement;
- Diplomatic, and hence, not binding on parties;
- Characteristics :

Inquiry : establishment of facts and report;

Conciliation : investigation of facts and proposals for settlement;

- Hague Commissions, 1899 and 1907 : Conciliation Commissions;
- G. A. : Panel for Inquiry and Conciliation.

Answer any Three –

3. ILO.**Answer :**

- ILO was founded in 1919 by the Treaty of Versailles;
- ILO is U.N.'s first specialised agency which seeks the promotion of social justice and internationally recognised human and labour rights;
- ILO formulates international labour standards setting minimum standards of basic labour rights, freedom of association, right to organise, collective bargaining, abolition of forced labour, equality of opportunity and treatment, etc.;
- ILO also provides technical assistance to various labour bodies;
- ILO has a unique tripartite structure with workers and employers participating as equal partners with Governments in the work of its governing organisations.

4. II Optional Protocol to CCPR.**Answer :**

- It was adopted on 15th December, 1989;
- It has a Preamble and 11 Articles;
- The Preamble states that the abolition of death penalty contributes to the enhancement of human dignity and progressive development of human rights;
- It has been agreed by all the State parties that they shall take all necessary measures to abolish the death penalty within their jurisdiction :
Exception - At the time of War, the State parties can give death penalty where serious crimes of a military nature have been committed;
- The State party has to notify to the Secretary General, the beginning and end of the War;
- Communication from individuals is acceptable as it is the first protocol;
- Presently, the trend in the world is to abolish the death penalty.

5. Minority Commission.**Answer :**

- Despite the safeguards provided for minorities in the Constitution of India and laws in force, it was decided to set up the National Commission for minorities whether based on religion or language;
- Commission was constituted in the year, 1993 under the National Commission for Minorities Act, 1992;
- It consists of President and the 5 members have to be from minorities;
- It shall evaluate the progress of the development of minorities under the Union and States, look into specific complaints, conduct studies and suggest appropriate measures to the Government;
- Lay annual report before Parliament;
- Recently the Commission has helped the Sikh refugees from Afghanistan by relaxing the provisions of the Foreigners Act, and also to give amnesty (i.e. general pardon, especially for offences against the State) to all of them.

6. Amnesty International.**Answer :**

- Amnesty International was founded in Britain in 1961 by Adv. Peter Benson and his friends;
- It is the largest NGO in the world. Its annual budget is more than the GNP of some countries;
- More than 1 million people worldwide from school children to pensioners of all races and politics, in 150 countries are working for the goals of the Amnesty international;

The goals are :

- 1) the release of prisoners of conscience.
- 2) fair and prompt trial for all political prisoners.

3) an end to the death penalty and torture;

- In order to be impartial, Amnesty International does not accept money from the Government;
- To ensure impartiality, no Amnesty International member works on behalf of prisoners held in their own country;
- To obtain reliable information, Amnesty International scans official sources, sends missions to countries, sends lawyers to observe trials and interviews witnesses, only then, it takes up the cause of a prisoners.

[Detail Answers to all the short notes above, are given in this Book].

Q. IV : Read the situation given and answer the questions which follow : = 20.

(A) A mail steamer flying a French flag and a Turkish vessel collided in the high seas. The Turkish vessel sank and seven persons were killed. The French steamer proceeded on its voyage and entered Turkish waters. Here, the Captain (of the French steamer) was arrested. He was tried and punished. The French Government challenged the jurisdiction of Turkey in punishing the Captain. The case was decided by PCIJ.

a) Which famous case under International Law do the aforesaid facts relate to ? = 1 Mark.

Answer : S.S. Lotus Case.

b) What do you think the French Government contended ? What was its ground of challenge ? = 3 Marks.

Answer : The French Government contended that the collusion occurred in high seas, and therefore, the flag State will have jurisdiction exclusively.

c) Which source of international law did France rely on, in this case ? = 2 Marks.

Answer : Customary source.

d) What was the decision in this case ? Why ? = 2 Marks.

Answer : The French Government's contention was rejected. It was held that, France had failed to prove the existence of a customary rule.

e) "The French Government's contention in this case has become the law in 1982 'the Law of Sea Convention' " – Examine the correctness of this statement. = 2 marks.

Answer : The statement is correct. The doctrine laid down by SS Lotus case is negated. Articles 92 and 97 of 1982 Commission provide jurisdiction exclusively to flag States. However, Article 97 provides that, in case of collision, flag state or state of nationality of the wrongdoer will have exclusive jurisdiction.

OR

(B) States A, B, C, and D enter into a treaty 'T'. The treaty confers the benefit of 'the most favoured nation' in the economic relations with state X. The treaty prohibits State Y from conducting any nuclear test ban. A has made certain reservations. The treaty is registered.

a) How far can 'T' affect X and Y ? Answer with reference to Vienna Convention, 1969. = 3 Marks.

Answer :

According to Article 34, Treaty primarily binds parties and may not affect third parties without its consent. A Treaty cannot create rights or obligations for a third State without its consent.

According to Article 36, state X can claim the benefit if it assents thereto. Its assent shall be presumed unless the contrary is indicated. Treaty can provide otherwise regarding this presumption.

According to Article 35, Y cannot be bound except where it expressly accepts that duty in writing.

b) How do you understand by registration of treaty? = 1 Mark.

Answer :

Article 102 of UN Charter provides that all treaties entered into by members of UNO shall, as soon as possible be registered with the Secretariat of UNO and be published by it.

c) Explain the consequence of non-registration. = 2 Marks.

Answer :

Article 102 provides that no party to a treaty no registered may invoke that Treaty before any organ of the U.N.O. Therefore, party cannot rely the unregistered treaty before I.C.J., G.A. or Secy. Council.

d) What is reservation ? = 2 Marks.

Answer : Give definition and meaning of 'reservation'.

e) What reservations are prohibited by Vienna Convention, 1969 ? = 2 Marks.

Answer :

- (i) Reservations prohibited by the treaty;
- (ii) Reservations which are not the specified reservations, but which are only permitted by the Treaty (Article 19);
- (iii) Reservations which are incompatible with the objects and purposes of the Treaty.

(c) Mr. Arun Kumar was arrested near Bandra Railway Station on 14th November, 2005. He was mercilessly beaten up in police custody. He suffered multiple fracture and severe head injury. On 17th morning he was produced before the Metropolitan Magistrate.

a) In the given situation, which human rights have been violated ? = 3 Marks.

Answer :

Article 21 : Right to dignity and right against torture (D.K. Basu's case; Nilabati's case; etc.)

Article 22 : Right to be produced before a Magistrate within 24 hours of arrest;

b) What constitutional remedies will Arun Kumar be entitled to ? = 2 Marks.

Answer :

Article 32 and 226 : Writs – orders – directions – release – compensation (Bhim Sing's case; Saheli's case; etc.)

c) Which statutory commission can be of assistance to Arun Kumar ? Name it. = 1 mark.

Answer : NHRC; SHRC.

d) What can the statutory commission do for Mr. Arun Kumar ? = 2 Marks.

Answer : Under PHRA, 1993, Make inquiry; Send report to Government with recommendations; Intervention if matter goes to Court; Visit jail and check.

e) Is he entitled to compensation ? Explain with case law. = 2 Marks.

Answer : Yes. Case Laws – Rahul Shah; Saheli; Nilabati; Sebastian Hongrany, etc.

[3]

[April, 2006]

With Solutions

N.B.

- 1) Answer Section I in the question paper itself.
- 2) Section I will be collected at the end of the first hour of the examination.
- 3) Answer all questions.

SECTION – I (40 Marks) :

Q. I : In case of multiple choice questions only one option is correct. Tick mark to the correct option. Fill in the blanks. Other questions shall be answered in one sentence.

1. The expressions 'International Law' and 'Law of Nations' are synonymous and are equivalent terms. The term 'International Law' was introduced by –
 - a) Grotius.
 - b) Vattel.
 - c) Bentham.
 - d) Blackstone.
- 2) The term 'Volkerrecht' (Deutsche) means –
Answer : Law of Nations or International Law.
- 3) State which of the following is not regarded as a source of International Law –
 - a) Municipal Legislation.
 - b) Custom.
 - c) Works of Jurists.
 - d) Treaties.
- 4) Unlike Treaty, Custom –
 - a) Grows gradually.
 - b) Grows with the growth of International Intercourse.
 - c) Grows in fits and starts.
 - d) None of the above.
- 5) In Eastern Greenland Case, the PCIJ in 1933 decided that a Treaty can be made by the State –
 - a) Written.
 - b) Orally.
 - c) Implied.
 - d) None of the above.
- 6) The International Law a weak law ?
Answer : Yes. (Stoicke).
- 7) Organisation of the Petroleum Exporting Countries (OPEC) is a –
 - a) Bilateral Treaty.
 - b) Multilateral Treaty.
 - c) Plurilateral Treaty.
 - d) None of the above.
- 8) What is *PACTA SUNT SERVANDA* ?
Answer : Every treaty in force is binding upon the parties to it, and must be performed by them, in good faith.
- 9) "A State is, and becomes, an International Person through recognition only and exclusively". Said by, –
 - a) Lauterpatcht.
 - b) Oppenheim.
 - c) Salmond.
 - d) Starke.
- 10) *De facto* recognition means –
 - a) Recognition of a factual situation without conferring any legality on the new State or Government.
 - b) Virtually it amounts to recognition in law.

- c) Nothing at law or in fact.
- d) Nothing in International Law.

11) "Custom is the original and the oldest source of International Law and at a same time it was the most important amongst the sources".

- a) True.
- b) false.

12) A State becomes an International Person by recognition and recognition alone. This is called -

- a) Facultative Theory.
- b) Declaratory Theory.
- c) Evidentiary Theory.
- d) Constitutive Theory.

13) Admission of State as a member of United Nations -

- a) Does not constitute a recognition by other member States of the U.N.
- b) Constitutes collective recognition by them.
- c) Constitutes *de facto* recognition by other States individually.
- d) Constitutes *de jure* recognition by other States individually

14) What is Piracy ?

Answer : It means, 'Robbery on sea, navigation in the high sea with the object of committing violent act against other persons and property'.

15) The Breadth of the EEZ is an area beyond and adjacent to the Territorial Sea extending up to -

- a) 300 N.M.
- b) 200 N.M.
- c) 12 N.M.
- d) 350 N.M.

16) UNCLOS, 1982 provides that every State has the right to establish the breadth of its territorial sea up to the limit not exceeding _____ nautical miles measured from base lines.

Answer : 12 Nautical Miles.

17) Under the customary rule of International Law, High Seas were free and open to -

- a) Limited States.
- b) Only land-blocked States.
- c) All States.
- d) Only States connected with seas.

18) "To fight and to die in a just war was good deed indeed. While just war was called Dharma Yudh, and unjust war was called Adharma Yudh". Said by -

- a) Mahatma Gandhi.
- b) Manu.
- c) Kautilya.
- d) Chanakya.

19) What is Dualistic Theory ?

Answer : International Law and Municipal Law are separate entities.

20) Settlement of disputes by peaceful means is one of the Principles of the United Nations.

- a) True.
- b) False.

21) "Individual is not a subject of International Law".

- a) True.

- b) False.
- 22) Aliens have the right to retain their own language, culture and traditions.
a) True.
b) False.
- 23) Is the threat or use of nuclear war weapons in any circumstances permitted under International Law ?
a) No.
b) Yes.
- 24) UNEP is the product of Stockholm Conference of 1972. It was set up by –
a) UNCITRAL.
b) WIPO.
c) General Assembly.
d) Security Council.

25) What is ILC ?

Answer : Committee on Progressive International Law and Codification.

- 26) The OHCHR maintains an office at the Head Quarter which is called –
a) Tokyo Office.
b) New York Office.
c) United Kingdom Office.
d) Swiss Office.
- 27) UDHR was adopted by General Assembly of the United Nations on –
a) Dec. 10, 1950.
b) Dec. 10, 1948.
c) Oct. 21, 1948.
d) Nov. 10, 1972.
- 28) Match the following and tick the correct one answer.

Name of the Rights	UDHR
I. Equality before Law.	a) Article 9.
II. Protection of Life and Personal Liberty.	b) Article 7.
III. Freedom of Speech and Expression.	c) Article 4.
IV. Protection of Slavery and Forced Labour.	d) Article 19.

Answers –

a)	I-d	II-c	III-b	IV-a
b)	I-b	II-a	III-d	IV-c
c)	I-a	II-d	III-c	IV-b
d)	I-c	II-b	III-a	IV-d

29) Match the following and tick the correct one answer.

Name of the Rights	Part-III of the Constitution of India
I. Protection of Life and liberty.	a) Article 25 (1)
II. Freedom of Conscience and Religion.	b) Article 21
III. Remedy for enforcement of Rights.	c) Article 20 (1)
IV. Protection in respect of conviction for offences.	d) Article 32

Answers –

a)	I-a	II-d	III-b	IV-c
b)	I-b	II-a	III-d	IV-c
c)	I-c	II-b	III-d	IV-a
d)	I-d	II-b	III-c	IV-a

- 30) The Holy Sea is a small sovereign state having land territory of about _____ K.M. and population of about _____ composed of persons residing therein by virtue of their office.
Answer : ½ K.M.; 1000/-
- 31) Article _____ of the Covenant on Civil and Political Rights had referred the desirability of the abolition of death penalty as it is one of the measures for the enjoyment of the Right to Life.
 a) Article 12.
 b) Article 06.
 c) Article 16.
 d) Article 21.
- 32) The Convention on the Rights of the Child was adopted by the General Assembly by consensus on –
 a) Nov. 16, 1980.
 b) Nov. 20, 1989.
 c) Oct. 21, 1990.
 d) Dec. 10, 1948.
- 33) The European Convention on Human Rights came into force on,
 a) Sept. 3, 1953.
 b) Oct. 30, 1952.
 c) Dec. 20, 1953.
 d) Nov. 15, 1952.
- 34) Who can be a party to the European Court of Human Rights ?
 a) All state Parties.
 b) High Contracting Parties.
 c) Some of the states.
 d) None of them.
- 35) The American Convention was adopted in the Inter-American specialised conference on the Human Rights, held at –
 a) Brazil.
 b) San Jose, Costa Rica.
 c) Helsinki.
 d) Strasbourg..
- 36) The Inter-American Court of Human Rights was adopted by the General Assembly of the Organization of American States in its Ninth Regular Session, held in –
 a) Dumbarton Oak.
 b) San Lorenzo.
 c) La Paz, Bolivia.
 d) San Francisco.
- 37) The positive commitment of the State Parties ignites legislative action at home but does not automatically make the covenant an enforceable part of the *corpus juris* of India, held in –
 a) Maneka Gandhi Case.
 b) Jolly George Varghese Case.
 c) Keshavanand Bharati Case.
 d) Golaknath Case.
- 38) Match the following and tick the correct answer.
- | Name of the Rights | Covenant on Economic, Social and Cultural Rights |
|-----------------------------------|--|
| I. Equal Pay for Equal Work. | a) Article 10 (2). |
| II. Maternity Relief. | b) Article 7 (a) (i). |
| III. Adequate Standard of Living. | c) Article 13 (1). |
| IV. Right to Child Education. | d) Article 11. |

Answers –

- a) I-a II-d III-b IV-c

b)	I-b	II-a	III-d	IV-c
c)	I-c	II-b	III-d	IV-a
d)	I-d	II-b	III-c	IV-a

39) National Commission on Human Rights (NCHR) was set up in India, on –

- a) Oct. 27, 1994.
- b) Sept. 27, 1993.
- c) Sept. 10, 1992.
- d) Dec. 10, 1991.

40) What is Negotiation ?

Answer : When disputants settle their disputes amongst themselves.

SECTION – II (60 Marks) :

Q. II : Answer Any Two :

= 20.

1) Define Treaty and state its kinds. Explain the procedure for termination of treaties.

Answer :

(A) Definition and meaning of Treaty –

The term 'Treaty' is derived from the words 'Tractare', that means to treat a binding agreement. A treaty is a binding agreement under International Law concluded by subjects of International Law, namely states and International Organizations. A treaty has its many names, such as treaties, international agreements, contracts, protocol covenants, conventions, concordats, pact, exchange of letters, exchange of notes etc. However, all the names of the treaty have equal authentic rules regardless of what the treaty is called. In lesser sense, we can compare a treaty with contract, as both are means of willing parties assuming rights and obligations *inter-se*. If either one party fails to perform their obligations, could be held legally liable for that breach of contract. It means, the pact must be respected.

Further, it could be defined that a treaty is an international agreement concluded between states in a written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Categorization of Treaty –

A Treaty can be categorised in three ways, viz.

- 1) Bilateral Treaty.
- 2) Plurilateral Treaty.
- 3) Multilateral Treaty.

1. Bilateral Treaty –

Bilateral Treaties in contrast, are negotiated between a limited members of states, most commonly only two, establishing legal rights and obligations between those two states only.

2. Plurilateral Treaty –

Plurilateral Treaty is a treaty, which is negotiated between two or more than two states but not for all states. The main motive of such types of treaties is to maintain peace and security. For example, European Coal and Steel Community, OPEC, NATO, League of Arab States, etc.

3. Multilateral Treaty –

A multilateral treaty has several parties at a time, and establishes rights and obligations between each party and every other party.

Multilateral treaties are often, but not always, open to any state, for signature and ratification, regardless their size and density of a population. Multilateral treaties have a very specific purpose such as to maintain international peace and security, etc. these treatise are called law-making treatise. For example, U.N. Charter, U.N.O., etc. are the names of multilateral treaties.

(B) Suspension and Termination of Treaties –

If a party has materially violated or breached its treaty obligations, the other parties may invoke this breach as grounds for temporarily suspending their obligations to that party under the treaty. A material breach may also be invoked as grounds for permanently terminating the treaty itself.

Treaties, sometimes include provisions for self-termination, meaning that, the treaty is automatically terminated if certain defined conditions are met. Some treaties are intended by the parties to be only temporarily binding, and are set to expire on a given date. Other treaties may terminate if a defined event occurs, if the treaty is meant to exist only under certain conditions or in the absence thereof.

According Article 62, a fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless : (a) the existence of those circumstances constituted an “essential basis” of the consent of the parties to be bound by the treaty; and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2) Define Law of Sea. Explain the terms ‘Territorial Waters’, ‘Exclusive Economic Zone’ (EEZ), ‘Continental Shelf and High Seas’.

Answer :

(A) Law of the Sea and its definition –

The Law of the Sea was needed some changes in the ‘freedom of seas’. The ‘freedom of the seas’ was the concept used for LOS in the 17th century by the coastal States. Due to weakness of the ‘freedom of the seas’, the national rights were limited to a specified belt of water extending from a nation’s coastline, usually three nautical miles (six Kms.), from the canon shot rule. All waters beyond national boundaries were considered international waters or high seas – free to all nations but belonging to none of them.

In the 19th century, many nations expressed a need to extend national claims : to include mineral resources, to protect fish stocks and to have the means to enforce pollution controls. This was recognised by the League of Nations in the Conference held in 1930 at the Hague of Netherlands. Nevertheless, the result was not effective to all the nations, and there was no agreement signed between them. One nation that undermined the ‘freedom of the seas’ was the United States. In 1945, President Truman unilaterally extended his nation’s control to cover all the ‘natural resources’ of their continental shelf. Other nations also follow the U.S.A. from 1945 to 1950; Argentina, Chile, Peru, and Ecuador all extended their sovereign rights to 200 nautical miles towards the sea. Other nations extended their territorial sea up to 12 nautical miles from the coast. By the year 1967, only 25 nations had used the old 3 nautical miles limit to exercise its jurisdiction. However, 66 nations had set a 12 nautical miles territorial limit, and 8 nations had set 200 nautical miles limit for the purpose to exercise its sovereign powers.

Indian perspectives :

The Central Government may, by notification in the Official Gazette, specifying the limits of such waters adjacent to its land territory, as are the historic waters of India. However, the sovereignty of India extends, and has always extended, to the historic waters of India and to the sea-bed and sub-soil underlying and the air-space over such waters.

According to Article 297 of the Constitution of India, all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the EEZ, as well as all other resources of the EEZ, vest in the Union Government to be held for the purpose of the Union. It also provides that the limits of the territorial waters, the continental shelf, the EEZ and other maritime zones of India shall be such as may be specified, from time to time by or under any law made by the Parliament.

(B) Territorial Waters –

The sovereignty of the coastal state extends, beyond its land territory and internal waters and, in the case of an archipelagic state, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

The sovereignty extends to the air-space over the territorial sea as well as to its bed and sub-soil.

The sovereignty over the territorial sea is exercised subject to this convention and to other rules of International Law.

Breadth of the Territorial Sea –

Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from base lines.

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured.

(C) Convention on the Fisheries and Conservation of Living Resources or EEZ –

The Exclusive Economic Zones extended the exploitation rights of coastal states to 200 nautical miles i.e. 370 kms. from the baseline, which covers all natural resources. Fishing rights and exploration of oil from the sea-bed and sub-soil are the main reasons for disputes between states. However, the coastal states have rights to explore oil up to the depth of 4000 metres isobaths.

Further, it is provided under the treaty that the breadth of the Exclusive Economic Zone is an area beyond and adjacent to the territorial sea, such breadth shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Rights and Duties of Coastal States in EEZ –

It has been provide by Article 56 of the UNCLOS, 1982, that in the Exclusive Economic Zone, the coastal states has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its sub-soil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents and winds.

However, in the EEZ, the coastal state has jurisdiction with regard to the establishment and use of artificial islands, installation and structures. Marine Scientific Research, the protection and preservation of the marine environment comes under the sovereignty of coastal states.

Rights and Duties of Other States in the EEZ –

In the Exclusive Economic Zone, all states, whether coastal or land-locked, enjoy the freedoms of navigation, over flights and of the laying of submarine cables and pipelines. It is necessary to note that, the States while exercising their rights and performing their duties in the EEZ, they shall have due regard to the rights and duties of the coastal State, and shall comply with the laws and regulations adopted by the coastal state in accordance with the provisions of this Convention (Convention on the Fisheries and Conservation of Living Resources) and other rules of International Law.

The Convention on the Continental Shelf –

Article 1 of the Convention on the Continental Shelf defines the 'continental shelf', as the sea-bed and sub-soil of the sub-marine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 meters or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

The reference to the exploitability criterion made that Article 1 of the Convention on the Continental Shelf, did not provide a satisfactory definition of the continental shelf, and these same provisions were not included in Article 76 of the LOS Convention. Although, the wide ratification of the LOS Convention has diminished the significance of the Convention on the Continental Shelf, it still provides the applicable law for a number of states with an outer continental shelf.

Specific Rights and Duties of states in the Continental Shelf Regime –

It is to be noted at the outset that, very few coastal states have even enumerated in their national legislation or other state practice, the full catalogue of sovereign rights, jurisdictional powers, and

especially, their legal duties within the continental shelf area. None have specifically provided for their rights and duties within the outer continental shelf, as distant from the inner continental shelf within the 200 nautical miles limit.

High Seas –

High Seas is that part of the sea that are included in the territorial sea or internal waters of the state – Under the customary rule of International Law, high seas were free and open to all states.

3) Define Human Rights. Critically examine the Rights of Prisoners.

Answer :

Definition of Human Rights –

According to D.D. Basu, human rights are those minimum 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 any other consideration.

Human Rights of Prisoner/Accused –

1. Right to Speedy Trial:

The Covenant on Civil and Political Rights laid down under Article 9, Para (3) that anyone arrested or detained on a criminal charge, shall be brought promptly before a Judge, and shall be entitled to trial within a reasonable period or to release. Though, the fundamental rights enshrined in the Constitution of India do not include that a person has a right to be tried without undue delay, the right still stands recognised which is illustrated through the following Case Law :

Hussainara Khatoon v/s. Home Secretary, State of Bihar –

It was held by the Supreme Court that, though, speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 which deals with the right to life and liberty.

Kadra Pehadiya v/s. State of Bihar, A.I.R. 1981, S.C. 939 –

Facts : In this case, four persons were confined in Pakud sub-jail in Santhal Paraganas in Bihar for about eight years without trial.

Held : The learned Judge observed that it is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial.

2. Right to Provide Legal Assistance :

The CCPR provides under Para (3) (d) of Article 14 that, everyone shall be entitled to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance to him, in any case where the interests of justice so require, and without payment by him, in any such case if he does not have sufficient means to pay for it.

But, the Indian Constitution does not provide this right as fundamental in Part III. However, it was held by the Supreme Court in *M.H. Hoskot v/s. State of Maharashtra* that the right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the Constitution of India.

Deoraj Khatri v/s. State of Bihar (Bhagalpur Blinding Case) :

The Court casts a duty on the Magistrate to inform the accused of his right to have legal aid at the State expense. It directed the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability.

Right to be informed about grounds of arrest on being arrested :

Rights of Prisoners/Accused to be Treated with Humanity :

Right to Compensation :

All Answers to all the Questions above, are given in this Book].

Q. III : Write short notes on Any Four :**= 20.**

- a) Municipal Law and International Law.
- b) Rights of Aliens.
- c) ILO.
- d) Minority Commission.
- e) Role of the High Courts.
- f) UNICEF.

Q. IV : Solve Any Two :**= 20.**

1) The dispute arose between Denmark and Norway regarding Denmark's claim of Sovereignty over the whole of Greenland. The Foreign Ministers of these two Governments had discussed the matter. However, the Foreign Minister for Norway had assured that the plans of the Danish Government respecting Danish Sovereignty over the whole of Greenland would meet with no difficulties on the part of Norway. This assurance was regarding Norway's attitude at the Paris Peace Conference of 1919. Decide.

A) Which Court has jurisdiction ? = (2).

Answer : International Court of Justice (ICJ) has the jurisdiction.

B) Give the name of the case. = (2).

Answer : Eastern Greenland Case, 1933.

C) Whether the declaration made by the Foreign Minister for Norway was binding by force ? (3).

Answer : Yes. It was decided by ICJ that the declaration made by the Foreign minister for Norway did not constitute an engagement obliging Norway to refrain from occupying any part of the territory of Greenland. It was held that an oral declaration in the nature of a promise made by the Minister for Foreign Affairs of one country on behalf of the country to the Minister of Foreign Affairs of another country, and in a matters within his competence and authority, may be as binding as a formal written treaty.

D) Give the reasons for decisions. = (3).

Answer : Reason for decision was laid down by the Court that occupation to be effective, requires, on the part of the appropriate State, two elements :
an intention or will to act as sovereign;
the adequate exercise or display of sovereignty.

2) The Paquette Habana, fishing boat and another fishing boat Lola, flying the Spanish flag, and belonging to Spanish subjects, were captured by a United States warship in the Blockade of the North coast of Cuba. They were brought before the Court for condemnation. Decide.

A) Whether under customary International Law, fishing boats were exempted from capture ? Give reasons. = (4).

Answer : Yes, boats were free from capture.

B) Which Court has jurisdiction ? = (4).

Answer : The Supreme Court of U.S.A. has the jurisdiction.

C) What is the name of the case ? = (2).

Answer : Paquette Habana Case.

3) Delegates from the German colony of Southwest Africa went to visit the members of the post of Naulilaa in Angola. Southwest Africa was German and Naulilaa was Portuguese. They wanted to discuss food that would be imported. However, they used translators to do the conference. Unable to speak the language clearly, the Portuguese speakers felt threatened, so they fired upon the German speakers. Killing two of them. So German retaliated by sending troops to attack Naulilaa

and other out-posts. The Portuguese people of that region left for safety. The issues went to three Swiss arbitrators, and Portugal relied on a territory it had from 1915. Decide.

A) Were the actions by both sides reasonable? = (4).

Answer : Yes, as they act on the law of nations by both sides and they were in self-defence and enforcement action.

B) Whether this reprisal was legal? = (4).

Answer : No, the reprisal was not legal, because,

i) the other nation's authorities did not act contrary to the law of nations; use of force is only justified by necessity, and here, there was no unsatisfied demand;

ii) even if it were proportional, this would still be considered excessive. A reprisal is an act of self-help on the part of the injured State after an unsatisfied demand, responding to an act contrary to the law of nations. It is illegal if the prior act, contrary to the law of nations, had not furnished the reason for it.

C) What was the name of the case? = (2).

Answer : Portugal v/s. Germany, 1928 (Also known as 'Naulilaa Incident Case').

[4]

[December, 2006 (05.12.06)]

With Solutions

N.B.

- 1) Answer Section I in the question paper itself.
- 2) Section I will be collected at the end of the first hour of the examination.
- 3) Answer all questions.

(It may be noted that, Q. No. II & IV in this Question Paper are same as that of April, 2006 Question Paper)

SECTION - I (40 Marks) :

Q. I : In case of multiple choice questions only one option is correct. Tick mark to the correct option. Fill in the blanks. Other questions shall be answered in one sentence.

1. Who is called the father of the International Law ?

- a) Grotius.
- b) Vattel.
- c) Lawrence.
- d) Blackstone.

2. What Austin called, "Determinate Human Superior", some called it, "Grund Norm". Which of the following jurist did it ?

- a) Kelsen.
- b) Hegel.
- c) Kent.
- d) Marx.

3. State which of the following is not regarded as a source of International Law -

- a) Municipal Legislation.
- b) Custom.

- c) Works of Jurists.
 - d) Treaties.
4. Unlike treaty, custom –
- a) grows gradually.
 - b) grows with the growth of International Intercourse.
 - c) grows in fits and starts.
 - d) none of the above.
5. In Eastern Greenland Case, the PCIJ in 1933 decided that a Treaty can be made by the state –
- a) written.
 - b) orally.
 - c) impliedly.
 - d) none of the above.
6. The Vienna Convention came into force on –
- a) May 23, 1929.
 - b) Jan. 27, 1980.
 - c) Dec. 10, 1963.
 - d) Nov. 15, 1966.
7. Organisation of the Petroleum Exporting Countries (OPEC) is a
- a) Bilateral Treaty.
 - b) Multilateral Treaty.
 - c) Plurilateral Treaty.
 - d) None of the above.
8. What is *PACTA SUNT SERVANDA* ?
- Answer : "Every treaty in force is binding upon the parties to it, and must be performed by them in good faith".
9. "A state is, and becomes, an International Person through recognition only and exclusively". Said by,
- a) Lauterpacht.
 - b) Oppenheim.
 - c) Salmond.
 - d) Starke.
10. *De facto* recognition means –
- a) Recognition of a factual situation without conferring any legality on the new state or Government.
 - b) Virtually it amounts to recognition in law.
 - c) Nothing at law or in fact.
 - d) Nothing in International Law.
11. The Stimson Doctrine of non-recognition of territories acquired by force was propounded by –
- a) The Secretary of state of the U.S.
 - b) The Foreign Minister of Belgium.
 - c) The Foreign Secretary of Great Britain.
 - d) The Foreign Secretary of Canada.
12. A state becomes an International Person by recognition and recognition alone. This is called –
- a) Facultative Theory.
 - b) Declaratory Theory.
 - c) Evidentiary Theory.
 - d) Constitutive Theory.

13. Admission of state as a member of United Nations –

- a) Does not constitute a recognition by other member states of the U.N.
- b) Constitutes collective recognition by them.
- c) Constitutes *de facto* recognition by other states individually.
- d) Constitutes *de jure* recognition by other states individually.

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Answer : It means, 'Robbery on sea, navigation in the high sea with the object of committing violent act against other persons and property'.

15. The Breadth of the EEZ is an area beyond and adjacent to the Territorial Sea extending up to –

- a) 300 N.M.
- b) 200 N.M.
- c) 12 N.M.
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16. UNCLOS, 1982 provides that every state has the right to establish the breadth of its territorial sea up to the limit not exceeding _____ nautical miles measured from base lines.

Answer : 12 Nautical Miles.

17. Under the customary rule of International Law, High Seas were free and open to –

- a) Limited states.
- b) Only land-blocked states.
- c) All states.
- d) Only states connected with seas.

18. Define Monroe Doctrine.

Answer : 1) Non-Colonization, and 2) Non-Intervention.

19. What is Self-Determination ?

Answer : The principle of equal rights and self-determination of peoples' in the declarations on the principles of International Law covering friendly relationship.

20. Settlement of disputes by peaceful means is one of the Principles of the United Nations.

- a) True.
- b) False.

21. "Individual is not a subject of International Law".

- a) True.
- b) False.

22. Aliens have the right to retain their own language, culture and traditions.

- a) True.
- b) False.

23. Is the threat or use of nuclear war weapons in any circumstances permitted under International Law ?

- a) No.
- b) Yes.

24. UNEP is the product of Stockholm Conference of 1972. It was set up by –

- a) UNCITRAL.
- b) WIPO.
- c) General Assembly.
- d) Security Council.

25. What is Green-House Effect ?

Answer : The term 'Green House Effect' is popularly used to describe the increasing warming of the earth's surface and lower atmosphere due to level of CO₂, CH₄, NO and CFCS.

26. The OHCHR maintains an office at the Head Quarter which is called –

- a) Tokyo Office.
- b) New York Office.
- c) United Kingdom Office.
- d) Swiss Office.

27. UDHR was adopted by General Assembly of the United Nations on –

- a) Dec. 10, 1950.
- b) Dec. 10, 1948.
- c) Oct. 21, 1948.
- d) Nov. 10, 1972.

28. Match the following and tick the correct one answer.

Name of the Rights	UDHR
I. Equality before Law.	a) Article 9.
II. Protection of Life and Personal Liberty.	b) Article 7.
III. Freedom of Speech and Expression.	c) Article 4.
IV. Protection of Slavery and Forced Labour.	d) Article 19.

Answers –

a)	I-d	II-c	III-b	IV-a
b)	I-b	II-a	III-d	IV-c
c)	I-a	II-d	III-c	IV-b
d)	I-c	II-b	III-a	IV-d

29. Match the following and tick the correct one answer.

Name of the Rights Part-III of the Constitution of India

I. Protection of Life and liberty.	a) Article 25 (1)
II. Freedom of Conscience and Religion.	b) Article 21
III. Remedy for enforcement of Rights.	c) Article 20 (1)
IV. Protection in respect of conviction for offences	d) Article 32

Answers –

a)	I-a	II-d	III-b	IV-c
b)	I-b	II-a	III-d	IV-c
c)	I-c	II-b	III-d	IV-a
d)	I-d	II-b	III-c	IV-a

30. On the recommendation of the Third Committee, the General Assembly on December 16, 1966, adopted the two Covenants –

- a) ICCPR & CCRC.
- b) CEDAW & ICESCR.
- c) ICCPR & ICESCR.
- d) CEDAW & CRC.

31. Article _____ of the Covenant on Civil and Political Rights had referred the desirability of the abolition of death penalty as it is one of the measures for the enjoyment of the Right to Life.

- a) Article 12.
- b) Article 06.
- c) Article 16.
- d) Article 21.

32. The Convention on Rights of the Child was adopted by the General Assembly by consensus on –

- ## Answers –

40. What is Mediation ?

Answer : When the Third Party participates in the discussion along with the disputant State and also gives its own suggestion resolving the disputes, the process is known as a 'mediation'.

SECTION - II (60 Marks) :

Q. II : Answer Any Two :

= 20.

1) Define Treaty and state its kinds. Explain the procedure for termination of treaties.

Answer :

(A) Definition and meaning of Treaty -

The term 'Treaty' is derived from the words 'Tractare', that means, to treat a binding agreement. A treaty is a binding agreement under International Law concluded by subjects of International Law, namely states and International Organizations. A treaty has its many names, such as treaties, international agreements, contracts, protocol covenants, conventions, concordats, pact, exchange of letters, exchange of notes etc. However, all the names of the treaty have equal authentic rules regardless of what the treaty is called. In lesser sense, we can compare a treaty with contract, as both are means of willing parties assuming rights and obligations *inter-se*. If either one party fails to perform their obligations, could be held legally liable for that breach of contract. It means, the pact must be respected.

Further, it could be defined that a treaty is an international agreement concluded between states in a written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Categorization of Treaty -

A Treaty can be categorised in three ways, viz.

- 1) Bilateral Treaty.
- 2) Plurilateral Treaty.
- 3) Multilateral Treaty.

1. Bilateral Treaty -

Bilateral Treaties in contrast, are negotiated between a limited members of States, most commonly only two, establishing legal rights and obligations between those two States only.

2. Plurilateral Treaty -

Plurilateral Treaty is a treaty, which is negotiated between two or more than two states but not for all states. The main motive of such types of treaties is to maintain peace and security. For example, European Coal and Steel Community, OPEC, NATO, League of Arab States, etc.

3. Multilateral Treaty -

A multilateral treaty has several parties at a time, and establishes rights and obligations between each party and every other party.

Multilateral treaties are often, but not always, open to any State, for signature and ratification, regardless their size and density of a population. Multilateral treaties have a very specific purpose such as to maintain international peace and security, etc. these treatise are called law-making treatise. For example, U.N. Charter, U.N.O., etc. are the names of multilateral treaties.

(B) Suspension and Termination of Treaties -

If a party has materially violated or breached its treaty obligations, the other parties may invoke this breach as grounds for temporarily suspending their obligations to that party under the treaty. A material breach may also be invoked as grounds for permanently terminating the treaty itself.

Treaties, sometimes include provisions for self-termination, meaning that, the treaty is automatically terminated if certain defined conditions are met. Some treaties are intended by the parties to be only

temporarily binding, and are set to expire on a given date. Other treaties may terminate if a defined event occurs, if the treaty is meant to exist only under certain conditions or in the absence thereof.

According Article 62, a fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless : (a) the existence of those circumstances constituted an “essential basis” of the consent of the parties to be bound by the treaty; and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2) Define Law of Sea. Explain the terms ‘Territorial Waters’, ‘Exclusive Economic Zone’ (EEZ), ‘Continental Shelf and High Seas’.

Answer :

(A) Law of the Sea and its definition –

The Law of the Sea was needed some changes in the ‘freedom of seas’. The ‘freedom of the seas’ was the concept used for LOS in the 17th century by the coastal States. Due to weakness of the ‘freedom of the seas’, the national rights were limited to a specified belt of water extending from a nation’s coastline, usually three nautical miles (six Kms.), from the canon shot rule. All waters beyond national boundaries were considered international waters or high seas – free to all nations but belonging to none of them.

In the 19th century, many nations expressed a need to extend national claims : to include mineral resources, to protect fish stocks and to have the means to enforce pollution controls. This was recognised by the League of Nations in the Conference held in 1930 at the Hague of Netherlands. Nevertheless, the result was not effective to all the nations, and there was no agreement signed between them. One nation that undermined the ‘freedom of the seas’ was the United States. In 1945, President Truman unilaterally extended his nation’s control to cover all the ‘natural resources’ of their continental shelf. Other nations also follow the U.S.A. from 1945 to 1950; Argentina, Chile, Peru, and Ecuador all extended their sovereign rights to 200 nautical miles towards the sea. Other nations extended their territorial sea up to 12 nautical miles from the coast. By the year 1967, only 25 nations had used the old 3 nautical miles limit to exercise its jurisdiction. However, 66 nations had set a 12 nautical miles territorial limit, and 8 nations had set 200 nautical miles limit for the purpose to exercise its sovereign powers.

Indian perspectives :

The Central Government may, by notification in the Official Gazette, specifying the limits of such waters adjacent to its land territory, as are the historic waters of India. However, the sovereignty of India extends, and has always extended, to the historic waters of India and to the sea-bed and sub-soil underlying and the air-space over such waters.

According to Article 297 of the Constitution of India, all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the EEZ, as well as all other resources of the EEZ, vest in the Union Government to be held for the purpose of the Union. It also provides that the limits of the territorial waters, the continental shelf, the EEZ and other maritime zones of India shall be such as may be specified, from time to time by or under any law made by the Parliament.

(B) Territorial Waters –

The sovereignty of the coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

The sovereignty extends to the air-space over the territorial sea as well as to its bed and sub-soil.

The sovereignty over the territorial sea is exercised subject to this convention and to other rules of International Law.

Breadth of the Territorial Sea –

Every state has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from base lines.

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

Where the coasts of two states are opposite or adjacent to each other, neither of the two states is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured.

(C) Convention on the Fisheries and Conservation of Living Resources or EEZ –

The Exclusive Economic Zones extended the exploitation rights of coastal states to 200 nautical miles i.e. 370 kms. from the baseline, which covers all natural resources. Fishing rights and exploration of oil from the sea-bed and sub-soil are the main reasons for disputes between states. However, the coastal states have rights to explore oil up to the depth of 4000 metres isobaths.

Further, it is provided under the treaty that the breadth of the Exclusive Economic Zone is an area beyond and adjacent to the territorial sea, such breadth shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Rights and Duties of Coastal States in EEZ –

It has been provide by Article 56 of the UNCLOS, 1982, that in the Exclusive Economic Zone, the coastal states has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its sub-soil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents and winds.

However, in the EEZ, the coastal state has jurisdiction with regard to the establishment and use of artificial islands, installation and structures. Marine Scientific Research, the protection and preservation of the marine environment comes under the sovereignty of coastal states.

Rights and Duties of Other states in the EEZ –

In the Exclusive Economic Zone, all States, whether coastal or land-locked, enjoy the freedoms of navigation, over flights and of the laying of submarine cables and pipelines. It is necessary to note that, the states while exercising their rights and performing their duties in the EEZ, they shall have due regard to the rights and duties of the coastal state, and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention (Convention on the Fisheries and Conservation of Living Resources) and other rules of International Law.

The Convention on the Continental Shelf –

Article 1 of the Convention on the Continental Shelf defines the 'continental shelf', as the sea-bed and sub-soil of the sub-marine areas adjacent to the coast but outside the area of the territorial sea to a depth of 200 meters or, beyond that limit to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

The reference to the exploitability criterion made that Article 1 of the Convention on the Continental Shelf, did not provide a satisfactory definition of the continental shelf, and these same provisions were not included in Article 76 of the LOS Convention. Although, the wide ratification of the LOS Convention has diminished the significance of the Convention on the Continental Shelf, it still provides the applicable law for a number of States with an outer continental shelf.

Specific Rights and Duties of states in the Continental Shelf Regime-

It is to be noted at the outset that, very few coastal states have even enumerated in their national legislation or other State practice, the full catalogue of sovereign rights, jurisdictional powers, and especially, their legal duties within the continental shelf area. None have specifically provided for their rights and duties within the outer continental shelf, as distant from the inner continental shelf within the 200 nautical miles limit.

High Seas –

High Seas is that port of the sea that are included in the territorial sea or internal waters of the state – Under the customary rule of International Law, high seas were free and open to all states.

3) Define Human Rights. Critically examine the Rights of Prisoners.

Answer :

Definition of Human Rights –

According to D.D. Basu, human rights are those minimum 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 any other consideration.

Human Rights of Prisoner/Accused –**1. Right to Speedy Trial:**

The Covenant on Civil and Political Rights laid down under Article 9, Para (3) that anyone arrested or detained on a criminal charge, shall be brought promptly before a Judge, and shall be entitled to trial within a reasonable period or to release. Though, the fundamental rights enshrined in the Constitution of India do not include that a person has a right to be tried without undue delay, the right still stands recognised which is illustrated through the following Case Law :

Hussainara Khatoon v/s. Home Secretary, State of Bihar –

It was held by the Supreme Court that, though, speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 which deals with the right to life and liberty.

Kadra Pehadiya v/s. State of Bihar, A.I.R. 1981, S.C. 939 – Facts : In this case, four persons were confined in Pakud sub-jail in Santhal Paraganas in Bihar for about eight years without trial.

Held : The learned Judge observed that, it is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial.

2. Right to Provide Legal Assistance :

The CCPR provides under Para (3) (d) of Article 14 that, everyone shall be entitled to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance to him, in any case where the interests of justice so require, and without payment by him, in any such case if he does not have sufficient means to pay for it.

But, the Indian Constitution does not provide this right as fundamental in Part III. However, it was held by the Supreme Court in *M.H. Hoskot v/s. State of Maharashtra* that the right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the Constitution of India.

Deoraj Khatri v/s. State of Bihar (Bhagalpur Blinding Case):

The Court cast a duty on the Magistrates to inform the accused of his right to have legal aid at the state expense. It directed the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability.

3. Right to be informed about grounds of arrest on being arrested :**4. Rights of Prisoners/Accused to be Treated with Humanity :****5. Right to Compensation :**

[Detail Answers to all the Questions above, are given in this Book].

Q. III : Write short notes on Any Four :

= 20.

a) Sovereign Equality of States.**Answer :****Sovereign Equality of states –**

Sovereign states are the subject of International Law in the fuller sense. Oppenheim has stated them 'real international person', because, they are the main legal persons in International Law. They possess their totality of International Rights and duties recognised by International Law.

The principle of the equality of state means that, every state is entitled to full respect as a sovereign state by other states. It is to be noted that, all the sovereign states are equal in status, irrespective of their size, population, resources and other distinctive features. The principle of equality of states has been recognised under Article 2 Para (1) of the Charter of United Nations, which says that "the

organisation is based on the principle of the sovereign equality of all the members". Further, Article 25 of the Draft Declaration on Rights and Duties of states also provides that every state has the right to equality in law with every state.

In particular, sovereign equality includes the following elements :

- i) states are juridically equal.
 - a. each state enjoys the rights inherent in full sovereignty.
 - b. each state has the duty to respect the personality of other states.
 - c. the territorial integrity and political independence of the states are inviolable.
 - d. each state has the right freely to choose and develop its political, social, economic and internal systems.
 - e. each state has the duty to comply fully and in good faith with the international obligations and to live in peace with other states.

b) Right to Development.

Answer :

Right to Development adopted after long study and some controversy, the declaration confirms the view of the International Community that the right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised.

The U.N. General Assembly adopted the declaration on 4th December, 1986. Read with Articles 1 to 10.

c) Amnesty International.

Answer :

Amnesty International is an international N.G.O. that protects human rights all over the world. Peter Benenson, a London based lawyer who organised a letter writing campaign calling for amnesty for "prisoners of conscience", founded it in 1961.

Though, Amnesty International has been performing various functions in promotion of Human Rights, its important functions are :

- a) Collection of information and monitoring the same.
- b) Legislation.
- c) Preventing the abuses and securing redress and humanitarian assistance to the victims.
- d) Education.
- e) Solidarity.
- f) Rendering services in the areas of social rights.

Amnesty International seeks to inform the public about violation of human rights, especially abridgement of freedom of speech and religion and the imprisonment and torture of political dissidents. It actively seeks the release of political prisoners and support of their families when necessary. Its members and supporters are set to number one million people in some 140 countries. Its first director, Sean Macbride won the 1974 Nobel Prize for peace. Amnesty International itself won an award in 1977.

d) Judicial Process.

Answer :

The Judge has two tasks. He must resolve the dispute before him and he must reach his decision by reference to some impartial rule of law. One of the most obvious aspects of formal justice is that all cases should be treated alike. One of the commonest and most noteworthy features of noteworthy institutions (i.e. clubs, societies, companies, etc., as well as, states) is the tendency to repeat earlier practice and follow earlier patterns. For these, and other reasons, most legal systems have developed a

system of precedent, including the use of past decisions as a guide to present decisions. A moment's thought by any student of English law should bring scores or decisions based on precedents to mind.

The powers of the Supreme Court for the protection of the Constitutional Rights of citizens are of the widest amplitude, and there is no reason why the Court should not adopt activist approach, similar to Courts in America and issue to the State, directions which may involve taking of positive action with a view to securing enforcement of the fundamental right. The Judiciary has been assigned this active role under the Constitution. They are not expected to sit under an ivory tower like an Olympian closing their eyes not caring for the problems faced by the society. They have to exercise their judicial powers for protecting the fundamental rights and liberty of the citizens of the country. Therefore, in order to achieve this mission, the judiciary has to exercise and involve its jurisdiction with courage, creativity and circumstances and with vision, vigilance, and practical wisdom. Judicial activism and self-restraint are facets of that courageous creativity and pragmatic wisdom.

e) Role of the Supreme Courts.

Answer :

It has been rightly said that the highest Court of any other country in their nature and extent wider, than those exercises the jurisdiction and powers of the Supreme Court.

It is at once a federal Court, a Court of appeal, and a guardian of the Constitution, and the law declared by it, in the exercise of any jurisdiction under the Constitution, is binding on all other Courts within the territory of India – Read with Articles 141, 32, 133, 136, 143, etc.

f) UNESCO.

Answer :

The UNESCO came into being on 4th November, 1946. It was brought into relationship with the United Nations when its Constitution was approved by the General Assembly in December, 1946. The purpose of UNESCO as defined in its Constitution, is to contribute peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law, and for the human Rights and Fundamental Freedoms for all.

UNESCO programs has two main aspects –

- ii) Permanent activities of general interest to all member states, such as the exchange of information and documentation, assistance to International NGOs and the preparation of International Convention.
- iii) Special activities designed to deal with specific problems in particular states. This program is broken down into 6 main areas of activities :
 - a) Education.
 - b) Natural science.
 - c) Social and human sciences.
 - d) Culture.
 - e) Mass communication.
 - f) International exchange.

[Detail Answers to all the short notes above, are given in this Book].

Q. IV : Solve Any Two :

= 20.

1) The dispute arose between Denmark and Norway regarding Denmark's claim of Sovereignty over the whole of Greenland. The Foreign Ministers of these two Governments had discussed the matter. However, the Foreign Minister for Norway had assured that the plans of the Danish Government respecting Danish Sovereignty over the whole of Greenland would meet with no difficulties on the part of Norway. This assurance was regarding Norway's attitude at the Paris Peace Conference of 1919. Decide.

A) Which Court has jurisdiction ? = (2).

Answer : International Court of Justice (ICJ) has the jurisdiction.

B) Give the name of the case. = (2).

Answer : Eastern Greenland Case, 1933.

C) Whether the declaration made by the Foreign Minister for Norway was binding by force ? = (3).

Answer : Yes. It was decided by ICJ that the declaration made by the Foreign minister for Norway did not constitute an engagement obliging Norway to refrain from occupying any part of the territory of Greenland. It was held that an oral declaration in the nature of a promise made by the Minister for Foreign Affairs of one country on behalf of the country to the Minister of Foreign Affairs of another country, and in a matters within his competence and authority, may be as binding as a formal written treaty.

D) Give the reasons for decisions. = (3).

Answer : Reason for decision was laid down by the Court that occupation to be effective, requires, on the part of the appropriate State, two elements :

- i) an intention or will to act as sovereign;
- ii) the adequate exercise or display of sovereignty.

2) The Paquette Habana, fishing boat and another fishing boat Lola, flying the Spanish flag, and belonging to Spanish subjects, were captured by a United States warship in the Blockade of the North coast of Cuba. They were brought before the Court for condemnation. Decide.

A) Whether under customary International Law, fishing boats were exempted from capture ? Give reasons. = (4).

Answer : Yes, boats were free from capture.

B) Which Court has jurisdiction ? = (4).

Answer : The Supreme Court of U.S.A. has the jurisdiction.

C) What is the name of the case ? = (2).

Answer : Paquette Habana Case.

3) Delegates from the German colony of Southwest Africa went to visit the members of the post of Naulilaa in Angola. Southwest Africa was German and Naulilaa was Portuguese. They wanted to discuss food that would be imported. However, they used translators to do the conference. Unable to speak the language clearly, the Portuguese speakers felt threatened, so they fired upon the German speakers. Killing two of them. So German retaliated by sending troops to attack Naulilaa and other out-posts. The Portuguese people of that region left for safety. The issues went to three Swiss arbitrators, and Portugal relied on a territory it had from 1915. Decide.

A) Were the actions by both sides reasonable ? = (4).

Answer : Yes, as they act on the law of nations by both sides and they were in self-defence and enforcement action.

B) Whether this reprisal was legal ? = (4).

Answer : No, the reprisal was not legal because :

- i) the other nation's authorities did not act contrary to the law of nations;
- ii) use of force is only justified by necessity, and here, there was no unsatisfied demand;
- iii) even if it were proportional, this would still be considered excessive. A reprisal is an act of self-help on the part of the injured State after an unsatisfied demand, responding to an act contrary to the law of nations. It is illegal if the prior act, contrary to law of nations, had not furnished the reason for it.

C) What was the name of the case ? = (2).

Answer : Portugal v/s. Germany, 1928 (Also known as 'Naulilaa Incident Case').

[5]

[May, 2007 (07.05.07)]

With Solutions

N.B.

1. Answer Section I in the question paper itself.
2. Section I will be collected at the end of the first hour of the examination.
3. Answer all questions.

SECTION – I (Marks 40) :

Q. I : In case of multiple choice questions only one option is correct. Tick mark to the correct option. Fill in the blanks. Other questions shall be answered in one sentence.

1. UNESCO stands for –

Answer : United Nations Educational, Scientific and Cultural Organization.

- a) The Universal Declaration of Human Rights is –
- b) Enforceable.
- c) Unenforceable.

2. Which of the following, embody the human right of self-discrimination ?

- a) The Atlantic Charter (1945).
- b) The U.N.O. Charter (1945).
- c) The Universal Declaration of Human Rights (1948).
- d) All the above.

3. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Which Article of the UDHR, 1948 mentions this ?

- a) Article 9.
- b) Article 12.
- c) Article 5.
- d) Article 19.

4. The Universal Declaration of Human Rights, 1948 has –

- a) Article 30.
- b) Article 20.
- c) Article 29.
- d) Article 45.

5. Article 15 (1) of the Constitution of India states –

Answer : "The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them".

6. What is the defining age of a child by Article 1 of the "U.N. Convention on the Rights of the Child" ?

- a) 18 years.
- b) 14 years.
- c) 21 years.
- d) 16 years.

7. The Principle of "*Jus Soli*" states that –

Answer : "A person's nationality at birth is determined by the place of birth".

8. The United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted in _____ and became law in _____.

Answer : 1979; 1981.

9. _____ is known as the "Father of the Law of Nations".

Answer : Hugo Grotius.

10. Which of the following Conventions were adopted at the Geneva Conference on the Law of the Sea in 1958 ?

- a) The Territorial Sea and the Contiguous Zone.
- b) High Seas.
- c) Fishing and Conservation of the Living Resources of the High Seas.
- d) Continental Shelf.
- e) All of the above.
- f) None of the above.

11. The two important theories of Recognition of States are _____ Theory and _____ Theory.

Answer : The Constitutive Theory; and The Declaratory or Evidentiary Theory.

12. Recognition given once –

- a) can be revoked.
- b) cannot be revoked.

13. Article _____ and Article _____ of the Constitution of India can be used for the enforcement of Fundamental Rights.

Answer: 32; and 226.

14. The International Labour Organisation has its headquarters in

- a) Rome.
- b) Vienna.
- c) Geneva.
- d) Montreal.
- e) None of the above.

15. The United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992 is also known as _____.

Answer : The Earth Summit.

16. "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state". Which Article of the American Constitution on Human Rights states this ?

Answer : Article 17.

17. "Mankind owes to the child the best it has to give". Which document of the United Nations States so ?

Answer : Declaration of the Rights of the Child, 1959.

18. The United Nations Conference on Human Environment in 1972 was held at _____
(specify place)

Answer : Stockholm (Sweden).

19. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal state has good reason to believe that the ship has violated the laws and regulations of that state.

Which international Convention states this ? (specify)

Answer : The Geneva Convention on the Law of the Sea.

20. The term used to indicate that part of sea which extends from a line running parallel to the shore to a specified distance therefrom, is –

- a) Marginal Belt.
- b) Territorial Waters.

21. The strategic arm of the legal aid movement which aims at bringing justice within the reach of the poor vulnerable masses and helpless victims is called _____.

Answer : Public Interest Litigation.

22. What Austin called, "Determine Human Superior", some called it, "Grund Norm". Which one of the following Jurist did it ?

- a) Grotius.
- b) Vattel.
- c) Lawrence.
- d) Blackstone.

23. In Eastern Greenland Case, the PCIJ in 1933 decided that a treaty can be made by the state –

- a) Written.
- b) Orally.
- c) Implied.
- d) None of the above.

24. What is *PACTA SUNT SERVANDA* ?

Answer : "Every treaty in force is binding upon the parties to it and must be performed by them in good faith".

25. The Stimson Doctrine of non-recognition of territories acquired by force was propounded by –

- a) The Secretary of State of the U.S.
- b) The Foreign Minister of Belgium.
- c) The Foreign Secretary of Great Britain.
- d) The Foreign Secretary of Canada.

26. What is Piracy ?

Answer : Piracy is the offence of "depredating on the seas, without being authorised by any foreign state, or with commission from different sovereigns at war with each other.

27. Under the Customary rule International Law, high seas were free and open to –

- a) limited states.
- b) only Land-blocked states.
- c) all states.

- d) only states connected with seas.
28. Settlement of disputes by peaceful means is one of the principles of the United Nations.
- a) True.
b) False.
29. Is the threat or use of nuclear weapons in any circumstances permitted under International Law ?
- a) No.
b) Yes.
30. The OHCHR maintains an office at the Head Quarter which is called -
- a) Tokyo Office.
b) New York Office.
c) United Kingdom Office.
d) Swiss Office.
31. On the recommendation of the Third Committee, at General Assembly on December 16, 1966 adopted the two Covenants -
- a) ICCPR & CRC.
b) CEDAW & ICESCR.
c) ICCPR & ICESCR.
d) CEDAW & CRC.
32. The European Convention on Human Rights came into force on -
- a) September 3, 1953.
b) November 20, 1989.
c) October 21, 1990.
d) December 10, 1948.
33. The Inter-American Court of Human Rights was adopted by the General Assembly of the Organization of American States in its Ninth Regular Session, held in -
- a) Dumbarton Oak.
b) San Lorenzo.
c) La Paz, Bolivia.
d) San Francisco.
34. What is Mediation ?
- Answer : The attempt to settle a legal dispute through active participation of a third party (mediator) who works to find points of agreement and make those in conflict agree on a fair result.**
35. Asylum case is an authority for which of the following ?
- a) Individual is subject to the law.
b) Invasion of state territory is illegal.
c) Opinio Juris shall be proved by the party who relies on custom.
d) Disputes shall be settled peacefully.
36. 'Caroline Case' is related to which of the following ?
- a) U.N.O. formation.
b) Fisheries Zone.
c) Treaty termination.
d) Self Defence.
37. _____ is the friendly interference of a neutral nation in the controversies of others to help settlement.

Answer : Mediation and/or Negotiation.

38. Human Rights Day is celebrated on –

- a) 10th October.
- b) 10th November.
- c) 10th December.
- d) 10th January.

39. What modification was brought in by the Optional Protocol to the International Covenant on Civil and Political Rights, 1966 ?

Answer : Abolition of the death penalty (Second Optional Protocol to ICCPR, 1966).

SECTION – II (Marks 60) :

Q. II : Answer Any Two :

= 20.

1) Explain the concept of “treaty” and summarize the various kinds of treaties.

Answer :

The answer should include the following points :

- a) A treaty is an agreement or contract entered into between two or more states whereby they undertake to carry out obligations imposed on each of them.
- b) A treaty is in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
- c) Classification of treaties by Oppenheim into law-making treaties which are concluded for the purpose of laying down rules of conduct among a considerable number of States, and treaties concluded for any other purpose.
- d) Classification of treaties according to subject-matter i.e treaties of alliance, treaties of guarantee, and treaties of commerce, etc.
- e) Unilateral, bilateral and multilateral treaties – binding one party, two parties or more than two parties.
- f) Transitory and permanent treaties.

2) Define “Law of the Sea”. Write briefly on “The Geneva Conference on the Law of the Sea, 1958”.

Answer :

Any definition is acceptable provided it contains the following points:

- a) Set of international legal rules concerning territorial and extra-territorial waters.
- b) Economic use, sovereignty zones, navigation, goals of protection for the ocean areas beyond national territorial seas.
- c) Freedom of the high seas – “common heritage of mankind”.

The Geneva Conference on the Law of the Sea, 1958 :

- i) Conference of U.N. members to examine the law of the Sea, taking account of not only legal but also of technical, biological, economical, and political aspects of the problem, and to embody the results of its work in one or more international conventions.
- ii) Convened from February 24 to April 27, 1958 with representatives of 68 countries.
- iii) Adopted four Conventions –
 - a) The territorial sea and the contiguous zone;
 - b) The high sea;
 - c) Fishing and the conservations of the living resources; and
 - d) The continental shelf.
- e) Emphasis on the “doctrine of hot pursuit”.

3) State and explain what are human rights. Critically examine the rights of convicts and prisoners.

Answer :

Human Rights –

The answer should include the following points :

- a) Inalienable and indivisible rights held by us all – basic standards of equity and justice without which people cannot live in dignity.
- b) Natural and fundamental rights.
- c) First, second and third generation rights, civil and political rights, economic, social and cultural rights, collective rights and land rights.

Rights of convicts and prisoners –

The answer should highlight the following points :

- 1) Dignity of convicts and prisoners as persons in the reformatory process.
- 2) Deprived of certain rights but otherwise entitled to the basic freedoms guaranteed by the Constitution.
- 3) A citizen does not cease to be a citizen just because he has become a prisoner – convicted persons Government to prison as punishment and not for punishment.
- 4) Some important rights should be mentioned, such as, right to Live with Human Dignity, Right to punishment as Prescribed by Law, Right to be Free of Fetters or Handcuffs, Right to Communication and Information, Right to Counsel, Right to Writ of habeas Corpus and Right to all Grievances.

[Detail Answers to all the Questions above, are given in this Book].

Q. III : Write short notes on Any Four :

= 20.

a) American Convention on Human Rights.

Answer :

The American Convention on Human Rights (also known as the "Pact of San Jose") is an international human rights instrument. It was adopted by the nations of the America in the meeting held at San Jose, Costa Rica, in 1969. It came into force after the eleventh instrument of ratification (that of Grenada) was deposited on 18th 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).

According to its Preamble, the purpose of the Convention is "*to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man*".

b) UNICEF.

Answer :

The United Nations Children's Fund (UNCF) General Assembly was created on December 11, 1946. Its earlier name was 'United Nations International Children's Emergency Fund (UNICEF)'. In 1953, its name was shortened from 'United Nations International Children's Emergency Fund' to 'United Nations Children's Fund'. But still it is known by the earlier popular old name. Thus, still it is called as 'United Nations International Children's Emergency Fund (UNICEF)'.

Headquartered in New York City, UNICEF provides for long-term humanitarian and developmental assistance to children and mothers in developing countries.

A voluntarily funded agency, UNICEF, relies on contributions from governments and private donors. Its program emphasize on developing community level services to promote the health and well-being of children. UNICEF was awarded the Nobel Peace Prize in 1995 and Prince of Asturias Award of Concord in 2006.

UNICEF is the world's leading children's organization. Over the 60 years of its history, it has become a primary reference for Governmental and Non-Governmental Organizations (NGO), collecting and disseminating more research on children than any other organization, writing papers on various aspects.

c) Role of the Supreme Court in enforcing human rights.

Answer :

Failure of Government in discharging their obligation results in the protection of the Human Rights by the judiciary. In the Indian context, since Independence, significant efforts have been made to strengthen the legal, constitutional, and institutional framework to protect and promote Human Rights. This work has been supported by an active and sensitive judiciary, in particular, the Supreme Court, through numerous judgments dating from the 1980s limiting the powers of government, enforcing accountability of the police and custodial institutions, while simultaneously expanding the notions of freedom and liberty to include civil and political as well as economic and social rights. These rights were developed by invoking a broad and purposive interpretation of fundamental rights, in particular, Article 21 of the Constitution of India. The Courts recognized the need for non-discrimination and non-arbitrariness in decision-making through expanding the various provisions of the Constitution to give effect to various aspects of freedom. Even the Directive Principles were used to give meaning to rights guaranteed.

d) Due process of law.

Answer :

Reference to Article 21 of the Constitution of India:

"No person shall be deprived of life or personal liberty except according to procedure established by law". Due process involves three ingredients viz. (1) Notice; (2) Opportunity to be heard; (3) An orderly course of procedure.

Citation of Case Law – Gopalan v/s. State of Madras (1950), SCR, 88 (p 111, 161, 256 and 319).

e) Amnesty International.

Answer :

Amnesty International (commonly known as Amnesty or AI) is a non-governmental organization that promotes Human Rights. Founded in the U.K. in 1961, AI draws attention to Human Rights abuses and campaigns for compliance with international standards. It works to mobilize public opinion in the belief that it is this which has the power to exert pressure on those who perpetrate abuses.

The specific aims of Amnesty International are :

- i) to abolish the death penalty.
- ii) to end extra-judicial executions and "disappearances".
- iii) to ensure prison conditions meet international human rights standards.
- iv) to ensure prompt and fair trial for all political prisoners.

f) Right to Development.

Answer :

The Declaration on Right to Development was adopted by the United Nations in 1986, by an overwhelming majority. U.S.A. dissented.

Article 1 of the Declaration puts forward the concept of the right to development. It states :

The right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in and contribute to and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized. The process of development, "in which all human rights and fundamental freedoms can be fully realized", would lead to, according to Article 2, Clause (3), "the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Subsequent Articles in the Declaration clarify the

nature of this process of development further and elaborate on the principles of exercising the right to development.

Q. IV : Solve Any Two : = 20.

1) On October 22, 1946, two British warships passing through the Strait of Corfu, were struck with mines in Albanian territorial waters, with the result that H.M.S. Saumarez sank while H.M.S. Volage was seriously damaged. On the Channel being swept by the British navy on November 12 and 13 without obtaining the consent of the Albanian authorities, a newly laid field of anchored mines was discovered at the same place where had occurred the explosions in October. Great Britain alleged that Albania was responsible for the presence of the mines in the Channel.

a) What is the name of the case and which were the countries involved ? = 2.

Answer : The name of the case is "The Corfu Channel Case", and the countries involved were the United Kingdom and Albania.

b) What were the maritime principles involved in the case ? = 4.

Answer : The maritime principles involved in the case were elementary consideration of humanity, even more exacting in peace than in war, on the principle of the freedom of maritime communications and every State's obligations not to allow knowingly its territory to be used for acts contrary to the rights of other States.

c) Which Court decided the case ? = 1.

Answer : The International Court of Justice.

d) What was the decision ? = 3.

Answer : The Court's decision was that the United Kingdom did not violate the sovereignty of the People's Republic of Albania by reason of the acts of the British Navy in the Albanian waters on October 22, 1946. Albania was held liable to pay pounds 8, 43, 947 to the United Kingdom.

2) On November 4, 1979, several hundred Iranian students invaded the U.S. embassy, seized a group of hostages and demanded that the exiled Shah be sent back from the United States. On the basis of facts, the invasion of embassy premises, the seizure of United States diplomatic and consular staff and their continued detention, the United States Government invoked jurisdictional provision in certain treaties as bases for the jurisdiction of the International Court of Justice in the present case and requested the Court to adjudge the case.

a) What is the name of the case ? = 1.

Answer : Name of the case is U.S. v/s. Iran.

b) Which was the Convention whose provisions were invoked? = 1.

Answer : The Vienna Convention on Diplomatic and Consular Relations, 1961 and 1963.

c) Pending its final decision, what were the provisional measures indicated by the Court ? = 3.

Answer : The provisional measures ordered by the Court to Iran were to immediately terminate unlawful detention of all United States diplomatic and consular staff and ensure that they have the necessary means to leave Iranian territory. The Court also decided that they would not be subjected to any form of judicial proceedings.

d) What was the final decision ? = 5.

Answer : The final decision of the International Court of Justice was that the Government of the Islamic Republic of Iran was under obligation to make reparations to the Government of United States for the injury caused to the latter by the events of 4th November, 1979 and what followed those events. The Court decided that the form and amount of such reparations failing agreement between the parties, shall be settled by the Court and reserved for that purpose subsequent procedure in the case.

3) Bipin Shah was arrested outside Dadar Bus Terminus on the night of 31 December, 2006. He was taken to the police station and questioned. However, when he was produced before the

Metropolitan Magistrate he could barely walk or talk as his body and face showed lacerations and swellings.

a) In the given situation, which human rights have been violated? = 3.

Answer : Right to be informed of the reason of his arrest, wrongful confinement and custodial torture.

b) What constitutional remedies will BipinShah be entitled to? = 2.

Answer : Constitutional remedies under Articles 20, 21 and 22 of the Constitution of India, as he cannot be arrested or convicted if he has not committed an offence in violation of a law in force at the time of his arrest and due process of law has not been followed.

c) Which statutory Commission can be of assistance to Bipin Shah ? Name it ? = 1.

Answer : The Maharashtra State Human Rights Commission.

d) What can the statutory Commission can do for Mr. Bipin Shah ? = 2.

Answer : The Commission can direct the Government to take action against the offenders. In this case, arresting the investigating officers concerned and ensure that justice is meted out to Bipin Shah.

e) Is he entitled to compensation ? Explain with case law. = 2.

Answer : Yes, Bipin Shah is entitled to compensation for his medical bills and loss of income for his absence from his work or occupation. State any relevant case law.

[6]

[December, 2007 (10.12.07)]

With Solutions

N.B.

1. Answer Section I in the question paper itself.
2. Section I will be collected at the end of the first hour of the examination.
3. Answer all questions.

SECTION – I (Marks 40) :

Q. I : In case of multiple choice questions only one option is correct. Tick mark the correct option/Fill in the blanks/Other questions shall be answered in one sentence.

1. U.N. Commission on Human Rights was established in –
 - a) June, 1945.
 - b) February, 1946.
 - c) December, 1947.
 - d) March, 1948.
2. Preamble to the Universal Declaration of Human Rights incorporates faith in –
 - a) the fundamental human rights.
 - b) the dignity and worth of women.
 - c) the equal rights of men and women.
 - d) to all mentioned above.
3. International Bill of Human Rights comprises –
 - a) Universal Declaration of Human Rights, 1948.
 - b) The Covenant on Civil and Political Rights, 1966.

- c) The Covenant on Economic, Social and Cultural Rights, 1966.
 - d) The 2 optional protocol to the covenant on civil and political rights.
 - e) The all mentioned above.
4. U.N. Centre for Human Rights has been established at –
- a) Vienna.
 - b) Beijing.
 - c) Geneva.
 - d) In a city other than the above three.
5. Right to marry has been recognised by the Universal Declaration under Article –
- a) 14.
 - b) 15.
 - c) 16.
 - d) 17.
6. As per Section 2 (d) of the Protection of Human Rights Act, 1993, Human Rights mean the rights –
- a) relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution.
 - b) embodied in the international covenants and enforceable by the courts in India.
 - c) none of the above.
 - d) both, a), and b).
7. "The right to life and personal liberty is not an absolute right, but is subject to the conditions that life and liberty may be taken in accordance with the procedure established by law". This was held by the Supreme Court in the case –
- a) Damayanti v/s. Union of India, AIR 1971, S.C. 966.
 - b) B.N. Khare v/s. State of Delhi, AIR 1950 S.C. 211.
 - c) State of U.P. v/s. Kaushalya, AIR 1964 S.C. 1170.
 - d) A.K. Gopalan v/s. State of Madras, AIR 1950 S.C. 27.
8. The right to live is not restricted to mere animal existence. It means something more than physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings". This was held by the Supreme Court in the case –
- a) Kharaksingh v/s. State of U.P. AIR, 1963 S.C. 1295.
 - b) Francis Coralie v/s. Union Territory of Delhi, AIR 1981 S.C. 746.
 - c) State of Maharashtra v/s. Chandrabhan 1983 S.C.C. 387.
 - d) A.K. Gopalan v/s. State of Madras, AIR 1950 S.C. 27.
9. "Each incident of sexual harassment results in the violation of the fundamental rights of gender equality and the right to life and liberty. It is clear violation of the rights under Article 14, 15 and 21 of the Constitution of India". This was held by the Supreme Court in the case –
- a) Smt. Gyan Kaur v/s. State of Punjab, AIR 1996, S.C. 946.
 - b) Vishakha v/s. State of Rajasthan, AIR, 1997 S.C. 3011.
 - c) A.P. Pollution Control Board v/s. M.V. Nayadu, AIR 1999 S.C. 812.
 - d) Mr. X v/s. Hospital Z, AIR 1999 S.C. 495.
10. Chairperson of the National Human Rights Commission is a person who –
- a) has been a Chief Justice of the Supreme Court.
 - b) has been a Chief Justice of a High Court.
 - c) has been the Attorney General of India.
 - d) has been a Judge of the Supreme Court.
11. The Chairperson and other members of the NHRC shall be appointed by the President by warrant under his hand and seal, provided that, every such appointment shall be made after obtaining the recommendations of a committee consisting of the Prime Minister as Chairperson and other members which include,

- a) Speaker of the House of the people.
 - b) Leader of the opposition in the House of the people.
 - c) Central Home Minister.
 - d) All the persons mentioned above.
12. According to Dicey, Private International Law is a of laws.
- a) conflict.
 - b) combination.
 - c) division.
 - d) classification.
13. Ratification is one of the important steps in concluding a
- a) Convention.
 - b) Treaty.
 - c) Talks.
 - d) Agreement.
14. Members of the Commonwealth have lost their sovereign power.
- a) True.
 - b) False.
15. The Principle of Reasonableness is one of the important principles in interpretation of treaties.
- a) True.
 - b) False.

16. Define International Law.

Answer : International law may be defined as that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe.

17. Name two schools of International Law.

Answer : Naturalists School and Positivists School

18. What is a Micro state ?

Answer : Micro state means an exceptionally small state for example Naru having an area of 8.25 square miles and a population of 3,000 persons; and Vatican City also is a micro State.

19. The source of municipal law is and customs.

- a) Excise.
- b) Legislative enactment.
- c) Usage.

20. International Women's Day is celebrated on –

- a) 8th March.
- b) 9th March.
- c) 10th March.
- d) None of the above.

21. What does CEDAW stand for ?

Answer : Covenant on Elimination of all forms of Discrimination Against Women.

22. Who is the Chairman of the State Human Rights Commission (SHRC) ?

- a) A person who has been the Chief Justice of a High Court in India.
- b) A person who has been a District Judge in that State.
- c) A person who has been a Judge of the Supreme Court of India.

d) An eminent sitting member of the Legislative Assembly of that State.

23. Where is the seat of the International Court of Justice ?

Answer : Hague.

24. Doctrine of Pacta Sunt Servanda is a Doctrine.

- a) English.
- b) French.
- c) Roman.
- d) German.

25. International Law was called the vanishing point of jurisprudence by –

- a) Austin.
- b) Holland.
- c) Moser.
- d) Zouche.

26. The European Convention on Human Rights came into force on –

- a) September 3rd 1953.
- b) October 30th 1952.
- c) December 20th 1955.
- d) November 14th 1972.

27. Asylum case is an authority for which of the following ?

- a) Individual is the subject of International Law.
- b) Invasion of state territory is illegal.
- c) *Opinio juris* shall be proved by the party who relies on custom.
- d) Disputes shall be settled peacefully.

28. “Casoline Case” is related to which of the following ?

- a) U.N. formation.
- b) Treaty termination.
- c) Fisheries Zone.
- d) Self Defence.

29. The NHRC and SHRC are established as per –

- a) Universal Declaration of Human Rights.
- b) Stockholm Declaration.
- c) Paris Principles.
- d) The Constitution of India.

30. What is the new name for United Nations International Children’s Emergency Fund (UNICEF) ?

Answer : United Nations Children Fund (UNCF).

31. Untouchability is abolished and its practice is punishable according to the following Article of the Constitution of India.

- a) Article 15.
- b) Article 15 (4).
- c) Article 16.
- d) Article 17.

32. The clemency of Capital Punishment is granted by –

- a) President of India.
- b) Chief Justice of India.
- c) Prime Minister of India.

- d) Parliament.
33. Decisions of NHRC are appealable in –
- Sessions Court.
 - High Court.
 - Supreme Court.
 - None of the above.
34. What is ILC (International Law Commission) ?
- Answer : ILC is a commission which shall have the object for the promotion of the progressive development of International Law and its codification.
35. What is the defining age of a child as per Article 1 of the UN Convention on the Rights of the Child ?
- 14 years.
 - 16 years.
 - 18 years.
 - 21 years.
36. What is Piracy ?
- Answer : Piracy is every unauthorised act of violence committed by a private vessel on the high seas against another vessel with intent to plunder.
37. Which are the oldest sources of law ?
- Treatise.
 - Customs.
 - Judicial Decisions.
 - Equity.
38. According to the convention on the Law of the Sea, every state has the right to establish the breadth of its territorial sea upto a limit not exceeding –
- 3 nautical miles.
 - 7 nautical miles.
 - 12 nautical miles.
 - None of the above.
39. The vulnerable groups under Human Rights are –
- Woman and child.
 - Migrant workers.
 - Refugees.
 - All the above.
40. The highest percentage of child labour is in –
- Africa.
 - Asia.
 - South America.
 - Europe.

SECTION – II (Marks 60) :

N.B.: Quote relevant legal provisions and case law wherever necessary.

Q. II : Answer Any Two :

1) Define state. What are the essentials of a state ? What are the kinds of state ?

= 20.

- 2) Discuss briefly the various peaceful means of settlement of dispute.
- 3) Establish the links between environment and human rights. With relevant cases, show how the quality of life is included in the right to life as guaranteed in Article 21 of the Constitution of India.

Q. III : Write short notes on Any Four : = 20.

- a) Rights of aliens.
- b) Rights of an accused.
- c) Principal organs of the United Nations.
- d) Continental Shelf.
- e) The two optional protocols to the International Covenant on Civil and Political Rights.
- f) International Labour Organization.

Q. IV : Solve Any Two : = 20.

- 1) Mr. 'X' was illegally detained in prison for over two years after his acquittal due to negligence of the jail authorities.

a) Is it a Human Rights violation ?

Answer : Yes, it is the violation of Human Rights.

b) Can 'X' seek help of the Court for injustice caused to him ?

Answer : Yes, 'X' can file Habeas Corpus writ petition in the High Court or the Supreme Court. He can also approach NHRC or SHRC and obtain relief and compensation for illegal detention.

c) Which Article of Constitution of India has been violated ?

Answer : Article 21 of the Constitution of India.

d) What is name of the case on which the problem is based ?

Answer : This problem is based on Rahul Shah's Case.

- 2) On October, 22, 1946, two British warships, passing through the straight of Corfu, were struck with mines in Albanian territorial waters, with the result that, H.M.S. Saumarez sank, while H.M.S. Volage was seriously damaged. On the channel being swept by the British Navy, on November, 12th and 13th, without obtaining consent of the Albanian authorities, a newly laid field of anchored mines was discovered at the explosions had occurred in October. Great Britain alleged that Albania was responsible for the presence of the mines in the channel.

a) What is the name of the case ?

Answer : Name of the case is Corfu Channel Case.

b) What were the maritime principles involved in the case ?

Answer : The well recognised principle of Customary International Law that foreign merchant vessels have a right of 'innocent passage' through the territorial waters.

c) Which Court decided the case ?

Answer : International Court of Justice (ICJ).

d) What was the decision ?

Answer : The International Court of Justice ruled that during peace time the warships of other states may pass through the territorial waters of the state. The Court ruled that Albania was guilty of causing loss to the British ships by laying mines in that part of the sea. Albania was held liable to pay compensation.

- 3) Stoeck was born in Germany in 1872. He went to Belgium in 1895 and relinquished his German nationality in 1896. In the same year i.e. 1896, he left Belgium and came to England. He decided to settle in England, but he could not get English nationality through naturalisation. During the

1st World war in 1916, the British Government treated him as a German national and declared him as “an enemy national”. In 1916 he was interned and in 1918 he was deported from England.

a) What is the name of the case ?

Answer : Stock v/s. Public Trustee, 1921.

b) Which Court has jurisdiction ?

Answer : The Permanent Court of Arbitration.

c) What was the judgment ?

Answer : The Court held Stock a stateless person and not a German national and set aside his order of deportation.

d) What development has taken place since this case whereby the decision could be different ?

Answer : In 1961, the General Assembly of the United Nations adopted the ‘Convention on the Reduction of Statelessness’. As per this Convention, renunciation shall not result in loss of nationality unless the person concerned acquires another nationality.

[7]

[April, 2008 (24.04.08)]

With Solutions

N.B.

- 1) Answer Section I in the question paper itself.
- 2) Section I will be collected at the end of the first hour of the examination.
- 3) Answer all questions.

SECTION – I (Marks 40) :

Q. I : In case of multiple choice questions only one option is correct. Tick mark the correct option/Fill in the blanks/ Other questions shall be answered in one sentence.

1. Universal Declaration of Human Rights, 1948 was adopted by General Assembly of the United Nations.
 - a) December 10, 1960.
 - b) December 10, 1948.
 - c) October 21, 1970.
 - d) November 10, 1978.
2. On the recommendations of the third committee, the General Assembly on December 16, 1966 adopted two covenants.
 - a) ICCPR and CRC.
 - b) CEDAW and ICESCR.
 - c) ICCPR and ICESCR.
 - d) CEDAW and CRC.

..... is the friendly interference of a neutral nation in the controversies of others to help settlement.

Answer : Mediation and/or Negotiation.

4. Right to strike is recognised in which of the following instruments.
 - a) CESCR.

- b) CCPR.
- c) Indian Constitution.
- d) None of the above.

5. Who can be a party of the European Court of Human Rights ?

Answer : High contracting parties.

6. The American convention was adopted in the inter-American specialised conference on the Human Rights held at –
- a) Brazil.
 - b) San Jose Costa Rica.
 - c) Helsinki.
 - d) Starbaury.
7. The Chairperson of the National Human Rights Commission has to be –
- a) Sitting Judge of a High Court.
 - b) Sitting Judge of a Supreme Court.
 - c) Former Chief Justice of the High Court.
 - d) Former Chief Justice of the Supreme Court.
8. Human Rights Day is celebrated on –
- a) 10th October.
 - b) 10th November.
 - c) 10th December.
 - d) 10th January.
9. The eleven norms to be observed regarding arrest of a person were laid down by the Court in the case-
- a) Joginder Kumar v/s. State of Haryana.
 - b) State of M.P. v/s. Shmsunder Trivedi.
 - c) D.K. Basu v/s. State of West Bengal.
 - d) None of the above.
10. Right to strike is recognised in which of the following instruments,
- a) CESCR.
 - b) Indian Constitution.
 - c) CCPR.
 - d) None of the above.
11. National Commission on Human Rights (NHRC) was set up in India in –
- a) 1994.
 - b) 1993.
 - c) 1992.
 - d) 1991.
12. Match the following and tick the correct one answer .
- | Name of the Rights | Part III of the Constitution of India |
|---|---------------------------------------|
| I. Protection of life and liberty. | a) Article 25 (1). |
| II. Freedom of conscience and religion. | b) Article 21. |
| III. Remedies for enforcement of rights. | c) Article 20 (1). |
| IV. Protection in respect of conviction for offences. | d) Article 32. |
- a) I – a) II – d) III – b) IV – c)
b) I – b) II – a) III – d) IV – c)
c) I – c) II – b) III – d) IV – a)
d) I – d) II – b) III – c) IV – a)
13. The convention on the Rights of the Child was adopted by the General Assembly by consensus in –

- a) 1960.
- b) 1989.
- c) 1955.
- d) 1948.

State True or False :

14. Universal Declaration of Human Rights, 1948 is not binding on states as law, but rather a U.N. recommendation to states.

Answer : True.

15. The Stockholm conference on the Human Environment was held in the year –

- a) 1927.
- b) 1982.
- c) 1972.
- d) 1992.

16. Right to Development, 1986 imposes the following duties on states –

- a) formulation of appropriate policies.
- b) ensuring equal access to basic resources.
- c) promote, encourage and strengthen respect for human rights.
- d) a), b) and c).
- e) a) and b).

17. "Custom has no place in law".

- a) Austin.
- b) Kelson.
- c) Holland.
- d) None of the above.

18. Custom must be immemorial, i.e. beyond living human memory. This statement is –

- a) True.
- b) False.

19. Kharak Singh v/s. State of U.P. is related with –

- a) Right to travel abroad.
- b) Right to privacy.
- c) Right to speedy trial.
- d) Right to provide legal assistance.

20. The right to free legal service is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the Constitution of India – was held in which case ?

- a) Right to travel abroad.
- b) Right to privacy.
- c) Right to provide legal assistance.
- d) None of the above.

21. In the case of People's Union for Democratic Rights v/s. Union of India –

- a) Article 21 envisages right to speedy trial.
- b) Non-payment of minimum wages is violative of Article 23.
- c) Right to live includes right to fresh water.
- d) None of the above.

22. Which of the following contains the provision that "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".

- a) The Universal Declaration of Human Rights.
- b) The Covenant on Economic, Social and Cultural Rights.

- c) The optional protocol to the Covenant on Civil and Political Rights.
d) The European Convention on Human Rights.
23. A Universal Treaty means a treaty between –
a) Two states.
b) Many states.
c) Majority of states.
d) All states.
24. The word 'International Law' in English was coined by –
a) Grotius.
b) Nussbaum.
c) Holland.
d) Oppenheim.
25. Decisions of ICJ are of binding force –
a) For the parties only.
b) For all the states of the world.
c) For all the members of the U.N.
d) For all the states parties to the statute of the ICJ.
26. Recognition is necessary –
a) For establishing mutual relationship.
b) For seeking approval of other states.
c) For seeking help of other states for acquiring statehood.
d) None of the above.
27. ECOSOC means –
a) Economic and Social Council.
b) Economic and Social Organization Council.
c) Economic and Social Organization Committee.
d) None of the above.
28. 'Caroline case' is related to which of the following ?
a) U.N.O. formation.
b) Treaty terminations.
c) Fisheries zone.
d) Self-defence.
29. In case, the PCIJ in 1933 decided that a treaty can be made by the state orally.
Answer : Eastern Green Land Case.
30. Untouchability is abolished and its practice is punishable according to the following Article of the Constitution of India.
a) Article 15.
b) Article 15 (4).
c) Article 16.
d) Article 17.
31. What do you mean by bilateral treaty ?
Answer : Bilateral treaties by contract are negotiated between a limited number of states, most commonly, only two establishing legal rights and obligations between those two states only.
32. What is piracy ?
Answer : Robbery on High Sea or open sea with the object of taking away the valuables from the passengers.
33. What is *Pacta Sunt Servanda* ?

Answer : “Every treaty in force is binding upon the parties to it, and must be performed by them in good faith”.

34. What is a land-locked state ?

Answer : A state which has no sea boundary.

35. What are the two “*res communis*” recognised by the law of Sea Convention, 1982 ?

Answer : Deep sea bed and High seas.

36. What is conciliation ?

Answer : When a dispute is referred to a commissioner or a committee to investigate the basis of the disputes and to make a report containing proposals for settlement after finding out the facts.

37. What do you mean by ‘Inquiry’ ?

Answer : When a commission is appointed consisting of impartial investigators for ascertaining the facts of the disputes, the process is called Inquiry.

38. Article 48 of the Constitution of India states –

Answer : State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and to take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milk and draught cattle.

39. De facto recognition means –

Answer : De facto recognition is always given to newly formed state at the initial stage, which can be revoked.

40. The term ‘treaty’ means, –

Answer : A formal, signed and ratified agreement between states.

SECTION – II (Marks 60) :

N.B. : Quote relevant legal provisions and case law wherever necessary.

Q. II : Answer Any Two : = 20.

a) Explain the salient features of the International Convention on Civil and Political Rights, 1996.

Answer :

Salient features of ICCPR –

The Universal Declaration on Human Rights Act, 1948 is a mile stone in the history of Human Rights. It has given a way to follow a series of treaties adopted within the United Nations. Chief among these are the two ICCPR and ICESCR.

ICCPR represents first generation of Human Rights. It consists 53 Articles. It provides civil and political rights. India is a party of ICCPR.

Some important provisions in ICCPR are as follows –

- All people have the right of self-determination [(Art. 1 (i))];
- 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 recognised in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political, etc. [Art. 2];
- The state parties to the present covenant undertake to ensure the equal right of men and women. [Article 3];

- Right against torture, etc.:
- Right against slavery, servitude, etc.

b) Define Human Rights. Critically examine the Rights of Workers.

Answer :

Human Rights –

According to D.D. Basu, Human Rights are those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of our human family, irrespective of any other consideration. According to Human Rights Act, 1993, Section 2 (d), Human Rights mean the rights relating to life, liberty, equality and dignity.

Rights of Workers –

ICESCR Article 12 (1) :

- a) Recognises the right to just and favourable working conditions;
- b) Fair wages and equal wages for equal work, without any discrimination;
- c) A wage that will ensure a decent living for the worker and his family in accordance with the standards set in the covenant.
- d) Constitution of India – Article 39 (d) Equal pay for equal work;
- e) Article 42 – Safe and human conditions of work;
- f) Article 43 – Living wages;
- g) Article 21 Right to live with human dignity free from exploitation;
- h) Asiad Case – it was held that where remuneration is grossly inadequate or is less than the minimum wages that would amount to forced labour.

Case Law :

- 1) Sanjit Roy v/s. State of Rajasthan (AIR, 1983 S.C.)
- 2) Bandhuva Mukti Morcha v/s. U.O.I. (AIR, 1984 S.C.)
- 3) Regional Director, ESIC v/s. Francis D'Costa (1993), SCC – Right of workers to health and medical benefits;
- 4) Right to fair remuneration;
- 5) Right to just and human conditions of work;
- 6) Right of workers to participate in the management;
- 7) Laws for workers – Payment of Wages Act, Payment of Bonus Act, 1965, Beedi and Cigar Act, 1966.

c) Explain custom as a source of International Law. Illustrate your answer with Case Law.

Answer :

Article 38 (1) (b) of the Statute of the International Court of Justice recognises “custom” as a source of International Law. It provides that the Court, whose function is to decide in accordance with International Law such disputes as are submitted to it, shall apply “international custom”, as evidence of a general practice accepted as law.

The Statute recognises “general custom” But, in practice Court permits local or regional customs amongst a group of states or just two states in their relations inter Section, as well as, for general customs binding upon the international community as a whole. Local customs may supplement or derogate from general customary international law.

It means “immemorial antiquity”:

Reasons for the reception of customs as a source of law –

- i) Customs arose from the natural principles of justice and public utility;
- ii) The sanction of the custom means the people of the nations accepted it;
- iii) Custom is to society, what law is to the state;
- iv) Stability and certainty;

State also the other essentials of the valid custom.

Case Law :

- 1) North Sea Continental Shelf Cases;
- 2) Asylum Case;
- 3) West Land Central Gold Mining Co. Ltd.
- 4) Anglo-Norwegian Fisheries Case.

Q. III : Write short notes on Any Four :**= 20.****a) Rights of aliens.****Answer :**

An Alien is entitled to certain minimum rights in a state where he resides, so that he may enjoy his ordinary private life.

While privileges which are granted to an alien may be revoked. The fundamental rights remain. Rights of alien are normally prescribed in treaties of commerce and establishment. Such treaties, very often insert 'National Treatment Clause', which means that aliens can only expect that treatment which is given by a state to its own citizens. They possess all those procedural rights which are available to the citizens in a state. They also possess substantive rights, which are the rights of the citizens of the country. However, special civil and political rights are denied to aliens. Thus, right to vote, to hold public office or to engage in political activities, are usually denied to them. Although they are not denied the right to work but they may be excluded from employment in certain professions, such as, master, Chief Officer, or Chief Engineer of a Merchant Ship, etc. His rights of personal security and his personal liberty are available to them as the citizens.

b) UNICEF.**Answer :**

The United Nations Children's Fund or UNICEF was established by the United Nations General Assembly on 11th December, 1946 in 1953. Its name was shortened from United Nations International Children's Emergency Fund; But is still known by its popular acronym. Its Head Quarter is in New York city.

UNICEF provides long term humanitarian and developmental assistance to children and mothers in developing countries. A voluntary funded Agency UNICEF relies on contributions from Governments and private donors. Its programmes emphasise developing community level services to promote the health and well-being of children. UNICEF was awarded the Nobel Peace prize in 1965.

c) Human Rights and child abuse.**Answer :**

The problem of child abuse in one of the serious problems in India. Child abuse is gross violation of Human Rights.

Meaning of Child Abuse -

Child abuse means, mis-treatment of a child either by parents or by other adults, especially in the form of life threatening, physical violence including severe beatings.

Causes and Forms of Child Abuse -

A variety of factors contribute to the child abuse, some of which are as under -

- 1) Physical punishment as a means, of correcting child's behaviour.
- 2) Stress of parents.
- 3) Sexual abuse of children, etc.

Legal Protection to Children -

- 1) The Children Act, 1933;
- 2) The Employment of Children Act, 1938;
- 3) The Minimum Wages Act, 1948;
- 4) The Mines Act, 1952;
- 5) The Atomic Energy Act, 1962;

- 6) The Beedi and Cigar Workers (Condition of Employment) Act, 1966;
- 7) The Child Labour (Prohibition & Regulation) Act, 1986, etc.

d) Amnesty International.

Answer :

Amnesty International is an international NGO that protects Human Rights all over the world. Peter Benenson, London lawyer who organised a letter writing campaign calling for amnesty for "prisoners conscience", founded in 1961.

Though Amnesty International has been performing various functions in promotion of Human Rights, its main important functions are as follows-

- 1) Collection of information and monitoring the same;
- 2) Legislation;
- 3) Preventing the abuses and securing redress and humanitarian assistance to the victims;
- 4) Education;
- 5) Solidarity;
- 6) Rendering services in the areas of social rights.

It seeks to inform the public about violation of Human Rights, especially abridgement of freedom of speech and religion and the imprisonment and torture. It actively seek the release of political prisoners and support of their families when necessary. It won Nobel Prize in 1977.

e) Sovereign equality of states.

Answer :

The term "sovereignty" means, supreme power. The principle of the equality of state means that every state is entitled to full respect as a sovereign state by other states. It is to be noted that all the sovereign states are equal irrespective of their size, population, resources, etc.

The principle of equality of states has been recognised under Article 2 para 1 of the Charter of United Nations, which says that the organisation is based on the principle of the sovereign equality of all its members.

Further Article 25 of the Draft Declaration on Rights and Duties of States also provides that every state has the right to equality in law with every state. In particular, sovereign equality includes the following elements –

- 1) Each state enjoys the rights inherent in full sovereignty;
- 2) Each state has the duty to respect the personality of other states;
- 3) The territorial integrity and political independence of the states are inviolable;
- 4) Each State has the right freely to choose and develop its political, social, economic and internal systems;
- 5) Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

f) Exclusive Economic Zone.

Answer :

The concept of EEZ was initiated by Kenya in 1972. The EEZ is an area beyond and adjacent to the territorial sea extending upto 200 nautical miles sea water form the coast baselines from which the breadth of the territorial sea is measured – Rights of the coastal states over EEZ; – Duties of the coastal states; – Rights of other states.

Q. IV : Solve Any Two :

= 20.

- 1) **Hawkers were carrying on business on pavements of roads of Mumbai. They were permitted by the municipal authorities to carry on their business by occupying a particular area on the**

pavements on payment of certain charges. But, thereafter, the municipal authority refused them to continue with their trade.

a) Is any fundamental human right of hawkers violated ? Identify.

Answer : Yes, under Article 19 (1) (g) of the Constitution of India provides for freedom of trade, occupation, profession or business.

b) What is the remedy available to hawkers ?

Answer : Remedies under Article 32 of the Constitution of India before the Supreme Court, or under Article 226 before the High Court for violation of fundamental right in the form of Writs, Orders, Directions.

c) What are the restrictions permitted on this right ?

Answer : Article 19 (6) – Interest of general public.

d) Is there any judgment on facts of this case ? Name the same.

Answer : Yes. Abhilash Textile v/s. Rajkot Municipal Corporation (AIR 1988, Guj.).

2) The Air India authority makes a regulation and provides that, an Air-Hostess would retire from the service attaining the age of 35 years or on marriage within 4 years of service or on first pregnancy, whichever occurred earlier. She challenges the rules and regulations of Air India authority before the Supreme Court.

a) Will she succeed ?

Answer : Yes, she will succeed.

b) Is it a violation of human right ?

Answer : Yes.

c) Explain Article 14 and Article 15 of the Constitution of India.

Answer : Article 14 – Equality before law – Article 15 – No person shall be discriminated only on the ground of caste, creed, race and religion, place of birth and sex.

d) Cite the relevant case law.

Answer : AIR India v/s. Nargesh Mirza.

3) States 'A', 'B', 'C' and 'D' enter into a treaty 'T'. The treaty confers the benefit of the most favoured nation in the economic relations with state 'X'. The treaty prohibits state 'Y' from conducting any nuclear test. 'A' has made certain reservations. The treaty is registered.

a) How far can 'T' affect 'X' and 'Y' ? Answer with reference to Vienna Convention, 1969.

Answer : Refer Articles 34, 35 and 36 of the Vienna Convention – Article 34 – A treaty does not create any rights or obligations for a third state without its consent. – Article 36 – 'X' can claim the benefits if it assents thereto – Article 35 'Y' cannot bound except where it expressly accepts that duty in writing.

b) What do you understand by registration of the treaty ?

Answer : A treaty is required to be registered with the Secretary General of the United Nations, after it has come into force.

c) Explain the consequence of non-registration.

Answer : Article 102 provides that no party to a treaty not registered, may invoke that treaty before any organ of the U.N.O. So party cannot approach to ICJ (International Court of Justice), General Assembly or Security Council.

d) What is reservation ?

Answer : Reservation means, when a state party to a treaty requests that particular clause of a treaty may not be made applicable to that state and consequently other state parties accept the request, it is called the reservation of a treaty.

e) What is meant by publication of treaty ?

Answer : Publication of the treaty is for the knowledge of all the states at international level.

"Human Rights and Public International Law"**UNIVERSITY EXAMINATION QUESTION PAPER*****Revised Course*****According to New Question Paper Pattern****Question Papers [8] to [29]****Time : 3 Hours****Marks : 100.****[8]****[November, 2008 (18.11.08)]*****With Solutions***

Q. 1 : Write short answer (not more than Two sentences = 2. (marks each)) : = 20.

a) Define International Law.

Answer : International Law regulates the relations of states with one another. Definition given by Oppenheim, etc.

b) What is mediation ?

Answer : Where the third party actually participates in the discussion together with the concerned parties and third party also makes suggestions.

c) What is the meaning of Right to Development ?

Answer : The term 'development' encompasses the development of economic, social, cultural and political process for the development of economic, social, cultural and political process for the development of the personality of human beings.

d) What do you mean by acquiring territory by occupation ?

Answer : An act of appropriation by a state over a territory which does not belong to any other state.

e) What do you mean by UNICEF ?

Answer : It was established by the United Nations General Assembly on December 11, 1946. It provides long term humanitarian and developmental assistance to children and mother.

f) What is conciliation ?

Answer : This refers to the reference to a commission of persons to investigate the basis of disputes and to make a report containing proposals for settlement after finding out facts.

g) What do you mean by Human Rights "Hot Line" ?

Answer : A 24 hour facsimile line that allows the office of the High Commissioner for human rights in Geneva to monitor and react rapidly to human rights emergencies.

h) What are the objects of International Convention for Civil and Political Rights ?

Answer : Various objects including –

- i) to provide legally binding convention;
- ii) to preserve human dignity;
- iii) to provide various civil and political rights, etc.

i) What is meant by De Jure recognition ?

Answer : It is final, complete and lawful recognition of a state. Diplomatic representatives are exchanged.

j) What do you mean by Plurilateral Treaties.

Answer : Those treaties where the participation is open to a restricted number of states is called plurilateral Treaties.

Q. 2 : Answer Any Four short notes : _____ = 20.

a) ILO.

Answer :

ILO was established after the first world war on April 19, 1919 as an autonomous institution by the Treaty of Versailles and was associated with the League of Nations. ILO became the first specialized agency associated with the United Nations.

The ILO consists of a) International Labour Conference known as General Conference; b) Governing Body; c) An International Labour Office (Secretariat)

b) Arbitration method of settlement of disputes under International Law.

Answer :

Arbitration – Arbitration has been defined by the International Law Commission as a procedure for the settlement of disputes between States by a binding award on the basis of law and as a result of an undertaking voluntarily accepted

Characteristics of Arbitral Tribunals;

Composition of Arbitration.

c) National Human Rights Commission (NHRC).

Answer :

It was established under Protection of Human Rights Act, 1993.

Main Objects – Implementation of the Act –

For better protection of human rights in India.

Constitution of NHRC – Shall have 8 members – Will be headed by a Chairperson (see Section 3).

Powers and Functions – (Section Section 12 and 13).

d) European convention on Human Rights.

Answer :

The idea of regional arrangements for the promotion and protection of human rights has been gaining recognition since the adoption of the Universal Declaration of Human Rights, 1948. The Convention was signed by the members of the Council. It came into force on Sept. 3, 1953. The Convention in the year 2000 has 4 contracting States.

The Convention has 11 Protocols;

Rights and Freedoms under Convention

Implementing machinery

European Commission of Human Rights (how not existed) and the European Court of Human Rights.

e) Amnesty International (A.I.)

Answer :

It is a Non-Governmental Organization that promotes human rights. Founded in the U.K. in 1961. Amnesty International draws attention to human rights abuses and campaigns for compliance with international standards. It works to mobilize public opinion in the belief that it is this which has power to exert pressure on those who perpetrate abuses.

The specific aims of Amnesty International are to –

- a) Abolish the death penalty;
- b) End extra-judicial executions and disappearances;
- c) Ensure prison conditions;
- d) Meet international human rights standards.

f) Role of Supreme Court in protection of Human Rights.

Answer :

Failure of Government in discharging their obligation results in the protection of human rights by the judiciary. In the Indian context, since independence, significant efforts have been made to strengthen the legal, constitutional and institutional framework to protect and promote human rights.

Various human rights are developed by invoking a broad and purposive interpretation of fundamental rights, in particular Article 21 of the Constitution..

The Courts recognised the need for non-discrimination and non-arbitrariness in decision-making through expanding the various provisions of the Constitution of India. Even the Directive Principles were used to give meaning to rights guaranteed –

see Articles 21, 14, 19, 32, 136

Q. 3 : Solve Any Two problems :

= 12.

a) Mr. 'X' was illegally detained in prison for over two years after his acquittal due to negligence of the jail authorities.

i) Is it a Human Rights violation ? Explain. Which Article of the Indian Constitution has been violated ?

Answer : Yes. It is a violation of human rights, because of violation of equality – Case : Air India v/s. Nargesh Mirza.

ii) Can 'X' seek help of the Court for injustice caused to him. Explain with the help of case law.

Answer : Article 14 – Equality before the law and equal protection of law. Article 15 – No person shall be discriminated only on the ground of caste, creed, religion, place of birth and sex.

'X' can file habeas Corpus petition in the High Court or the Supreme Court. He can also approach NHRC or SHRC and obtain relief and compensation for illegal detention.

b) On October 22, 1946, two British warships, passing through the strait of Corfu, were struck with mines in Albanian territorial waters with the result that H.M.S. Sarmarez sank while H.M.S. volage was seriously damaged. The channel was swept by the British Navy on November 12th and 13th, without obtaining consent of the Albanian authorities. A newly laid field of anchored mines was discovered. Great Britain alleged that Albania was responsible for the presence of the mines in the channel.

i) What is the name of the case ? And which Court decided the case ?

Answer : The Corfu Channel Case. The International Court of Justice (I.C.J.) decided the Case.

ii) What was the decision ?

Answer : The Court's decision was that the United Kingdom did not violate the sovereignty of the people's Republic of Albania by reason of the acts of the British Navy in Albanian waters on October 22, 1946. Albania was held liable to pay pounds 8,43,947 to the United Kingdom.

c) The Air-India authority makes a regulation and provides that, an Air-hostess would retire from the service on attaining the age of 35 years or on marriage within 4 years of service or on first pregnancy, whichever occurred earlier. In this case, a petitioner Air Hostess terminated from her job on the ground of her first pregnancy, challenged the rules and regulations of Air India authority before the Supreme Court.

i) Is it violation of Human Rights ? Explain your answer with the help of a case law.

Answer : Yes. It is a human rights violation. Article 21 has been violated.

ii) Explain Article 14 and 15 of the Indian Constitution.

Answer : Problem based on Rudal Shaha's Case. See Articles 14 and 15.

Q. 4 : Answer Any Four :

= 48.

a) Discuss how individual is the subject of International Law.

Answer :

In classical International Law, individuals were regarded as the object of International Law, and not as its subject.

The procedural capacity of the individuals has been recently emphasized in International Law. Since its inception, the States have been given top priority.

The Universal Declaration of Human Rights, 1948 is a land-mark in the history of the United Nations Organization. This Declaration upholds the human dignity in every State in the World. It honours every person irrespective of his race, sex, religion, colour, language, political opinions, etc. It is a well settled principle now that individuals are also the subjects of International Law.

Charter of the United Nations by using the words 'People of the United Nations' in the Preamble has given a place of importance for individuals.

The Convention on the settlement of Investment of Disputes between States and Nationals of other States 1965 recognises the rights of the individuals and companies, etc.

But, certain individuals viz. pirates, espionage, etc. are always considered as object.

Rights and Duties of individuals.

Kelsen, Westlake, etc. are the supporters.

Individuals are the subjects of International Law.

b) Explain various stages followed in an International Treaty.

Answer :

Following are the steps which are generally adopted in concluding a treaty –

- 1) Accrediting of persons by the contracting States;
- 2) Negotiation;
- 3) Adoption of the Text;
- 4) Consent by the States;
- 5) Consent by the Signature;
- 6) Consent by Exchange of Instruments;
- 7) Consent by Ratification;
- 8) Entry into force;
- 9) Registration and Publication;

10) Pacta Sunt Servanda.**c) Discuss Universal Declaration of Human Rights, 1948.****Answer :**

Universal Declaration of Human Rights, 1948 is the first International Declaration on human rights. It was adopted by United Nations General Assembly on December, 10, 1948. 10th December is Human Right's Day.

It consists 30 Articles, crucial preamble.

Rights are divided into civil, and political and economic, social, and cultural rights.

Similarities between Universal Declaration of Human Rights and Fundamental Rights and Directive Principles of State Policy.

Article 1 states – spirit of brotherhood;

Article 2 – No discrimination;

Significance/Importance of UDHR. i.e. various conventions like ICCPR, ICESCR, Protocols, Declarations, Treaties, inspired by UDHR.

In Filartiga Case – It is considered as a source of rules of customary international law.

d) Discuss the Composition of Commission for Women in India and its functions.**Answer :**

For better implementation of constitutional provisions given in Articles 14, 15, 15 (3), 39 and for remedying the existing situation of women so to improve the conditions of women, the Parliament enacted the "National Commission Women Act, 1999 to constitute a National Commission for Women".

Constitution of the Commission –

A Chairperson : Nominated by the Central Government. Five persons to be nominated by the Central Government; Provided that, at least one member each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes, respectively.

Functions of the Commission –

- a) investigate and examine.
- b) reports present to the Central Government.
- c) recommendations for effective implementation.
- d) review constitutional provisions.
- e) look into complaints and take suo motu notices of the matters.
- f) special studies and investigation.
- g) undertake promotional and educational research.
- h) participate and advice
- i) evaluate the progress of the development of women under the Union and any State.
- j) fund litigation, involving issues affecting a large body of women.
- k) any other matter which may be referred to it by the Central Government.

e) Establish the links between environment and human rights. With relevant cases show how the quality of life is included in the right to life as guaranteed in Article 21 of the Constitution of India.**Answer :**

Right to clean and pollution free environment is greatest human right. Today it is a part and parcel of Article 21.

Various Constitutional provisions i.e. 42nd Amendment, Article 47, 48-A, 51-A (g) Article 21, Article 32, 226.

International Conferences i.e. Stockholm, Rio, etc.

Right to life does not mean mere animal existence, it includes quality of life.

Cases Law –

Doon Valley, Oleum Gas, M.C. Mehta v/s. U.O.I., Subhash Kumar v/s. State of Bihar, L.K. Koolwal v/s. State of Rajasthan, Kinkan Devi v/s. State of Himachal Pradesh, Vellore Citizen's Welfare Forum v/s. U.O.I.

- f) State and explain what are human rights ? Critically examine the rights of convicts and prisoners.

Answer :

- 1) Inalienable and indivisible rights held by us all – basic standards of equality and justice without which people cannot live in dignity.
- 2) Natural and fundamental rights.
- 3) First, second and third generation rights i.e. civil and political rights, economic, social and cultural rights, collective rights.

Rights of convicts and prisoners :

- a) Dignity of convicts and prisoners as persons in the reformatory process.
- b) Deprived of certain rights but otherwise entitle to the basic freedoms guaranteed by the Constitution.
- c) A citizen does not cease to be a citizen just because he has become a prisoner convicted person.
- 4) Some important rights should be mentioned such as right to live with human dignity, right to punishment as prescribed by law, right to be free of fetters or handcuffs, right to communication, counsel, etc.
- 5) Case Law.

[9]

[April, 2009 (27.04.09)]

With Solutions

Q. 1 : Answer in not more than Two sentences : _____ = 20.

- a) **Define International Law.**

Answer : International Law regulates the relations of States with one another. Oppenheim's definition – "The law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other".

- b) **What is the meaning of "Right to Development" ?**

Answer : The term 'development encompasses the development of economic, social, cultural and political process for the development of the personality of human beings.

- c) **What is Piracy ?**

Answer : Piracy is a 'robbery' on high sea or open sea with the object of taking away the valuables from the passengers.

- d) **Define UNICEF.**

Answer : United Nations Children's Fund – It was established by the UNO on December 11, 1946. It provides long term humanitarian and developmental assistance to children and mother.

e) Explain Article 39 (d) of the Indian Constitution.

Answer : Article 39 (d) : that there is equal pay for equal work for both, men and women.

f) What do you mean by Principle of Sovereign Equality ?

Answer : It means that every state is entitled to equal and full respect as a sovereign state by other states irrespective of their size, population, resources, etc. The term 'sovereignty' means supreme power.

g) What are the objects of International Convention on Rights of a child ?

Answer : i) Respect for the child's opinion. It means that, a child has various freedoms. ii) Each child has right equal in value as an adult., thus entitles no discrimination. iii) Each child has equal value as a human being, it implies right to enjoy childhood. iv) Principle of best interest of the child balances the need for protection of children while respecting them.

h) What do you mean by EEZ ?

Answer : Exclusive Economic Zone – The EEZ is an area beyond and adjacent to the territorial sea extending upto 200 nautical miles seaward from the coast baselines from which the breadth of the territorial sea measured.

i) Explain three rights of aliens.

Answer : They possess all those procedural rights which are available to the citizens in a state. They also possess substantive rights, which are the rights of the citizens of the country.

j) What do you mean by De Jure Recognition ?

Answer : De jure recognition is final, complete and lawful, diplomatic representatives are exchanged. It may be given directly.

Q. 2 : Write short notes on Any Four :

= 20.

a) Right to Information.

Answer : The Covenant on Civil and Political Rights laid down under Article 19 para 2 that everyone ... (see Notes).

Indian Constitution Articles 19 (1) (a), Article 21.

Right to Information Act.

S. P. Gupta v/s. Union of India.

b) Human Rights and Convicts.

Answer : The answer should highlight the following points –

i) Dignity of convicts as persons in the reformatory process.

ii) Deprived of certain rights but otherwise entitled to the basic freedoms guaranteed by the Constitution.

iii) Some important rights should be mentioned, such as, right to live with human dignity, right to punishment as prescribed by law, right to be free of fetters or handcuffs, right to communication, to have Counsel, etc.

c) Treatments of Aliens.

Answer :

i) Who is an alien ?

ii) Subject to the municipal law of the other country.

iii) Rights of aliens.

b) Mr. Rohit was illegally detained in a prison for over two years after his acquittal due to negligence of the jail authorities.

i) Is it a violation of human rights ? Explain which Article of the Indian Constitution has been violated.

Answer : Yes, it is a violation of human rights. Article 21 – explain briefly Article 21.

ii) Can Rohit seek help of the Court for injustice caused to him. Explain with the help of case law.

Answer : Yes, Rohit can file habeas corpus petition in the High Court or the Supreme Court. He can also approach NHRC or SHRC and obtain relief and compensation for illegal detention – Case Rudal Shah's case.

c) A mail steamer flying a French flag and a Turkish vessel collided in the high seas. The Turkish vessel sank of 7 persons were killed. The French steamer proceeded in its voyage and entered Turkish-waters. Here, the captain was arrested. He was tried and punished. The French Government challenged the jurisdiction of Turkey in punishing the captain. The case was decided by PCIJ.

i) Which famous case under International Law do the aforesaid facts relate to ? Explain what was the decision in this case.

Answer : S.S. Lotus Case. It was held that France had failed to prove the existence of a customary rule, forbidding states from exercising jurisdiction in favour of the flag state.

ii) What do you think the French Government contended ? What was the ground of challenge ?

Answer : The collision occurred in high seas and so the flag state will have jurisdiction exclusively.

Q. 4 : Solve Any Four (12 marks each) :

= 48.

a) Write an essay on "Human Rights and Environment". Are laws in India adequate to protect environment ?

Answer :

Answer should include –

i) Right to clean or pollution free environment is greatest human right. Today it is part and parcel of Article 21.

ii) Various Constitutional provisions i.e. 42nd Amendment, Article 47, 48-A, 51-A (g), Article 32, Article 226.

iii) International Conferences, such as, Stockholm, Rio, etc.

iv) Case Law – Doon Valley; Oleum Gas (M.C. Mehta v/s. Union of India AIR 1987 S.C.); Vellore Citizen's Welfare Forum v/s. Union of India.; etc.

v) Laws are adequate except some lacunas like Section 19 of the Environment Protection Act, Air Act, Water Act, etc. regarding Notice before 60 days, etc.

b) Critically examine the rights of the prisoners.

Answer :

The answer should include the following points –

a) Inalienable and indivisible rights held by us all – basic standards of equity and justice without which people cannot live in dignity.

b) Natural and fundamental rights.

c) First, second and third generation rights.

d) Deprived of certain rights but otherwise entitled to the basic freedoms guaranteed by the Constitution.

- e) A citizen does not cease to be a citizen just because he has become a prisoner.
- f) Some important rights should be mentioned, such as, Right to live with human dignity, punishment as prescribed by law, Right to be free of fetters or handcuffs, Right to communication, information, counsel, etc.
- g) Relevant Case Law.

c) Discuss briefly the various peaceful means of settlement of disputes.

Answer :

- i) Arbitration, Judicial Settlement, Diplomatic procedure.
- ii) Negotiation, Good offices, Mediation, Inquiry, Conciliation.

d) Discuss the role of NHRC in the protection of Human Rights.

Answer :

Introduction, Objects of NHRC – The Protection of Human Rights Act, 1993 was enacted with the purpose to provide constitution of NHRC and SHRC and Human Right Courts, and to provide better protections of human rights and for matters connected therewith.
Composition of Commission – The Commission shall consist of; Section 12, Section 13, etc.

e) Explain 'Custom' as a source of International Law.

Answer :

- i) Article 38 (1) (b) of Statute of the International Court of Justice recognises "custom" as a source of international law.
- ii) Article 53 of Vienna Convention.
- iii) Immemorial antiquity.
- iv) Reasons for the reception of customs as a source of law, like – The custom arose from natural principles of justice and public utility, the nations accepted it – custom is to society what law is to the state, etc.
- v) Customs vis-a-vis Usages.
- vi) Essentials of a valid custom – Reasonableness, Conformity with Statute law, Uniformity, Long duration, etc.
- vii) Case law.

f) Explain the salient features of the International Convention on Civil and Political Rights, 1966.

Answer :

- i) The Universal Declaration of Human Rights, 1948, is a mile stone in the history of human rights. It has given the way to follow a series of treaties adopted within the United Nations. Chief among these are the two including ICCPR. It represents 'First Generation' of human rights. It has 53 Articles. This Convention gives Civil and Political rights.
- ii) Two optional Protocols.
- iii) India is a party of this Convention.
- iv) Important political and civil rights, like Right to life, Liberty, Rights against torture, etc.
- v) Part III of the Indian Constitution and ICCPR, etc.

[10]

[November, 2009 (07.11.09)]

With Solutions

Q. 1 : Answer in not more than Two sentences : _____ = 20.

a) What do you mean by Human Rights ?

Answer : By virtue of human beings they possess certain basic and inalienable rights Right to Life, Liberty, Equality and Dignity.

b) What is the meaning of Right to Development ?

Answer : The term 'development' encompasses the development of economic, social, cultural and political process for the development of personality of human beings.

c) What is *Pacta Sunt Servanda* ?

Answer : Agreements between the nations must be respected by them.

d) What are the main objectives of UNESCO.

Answer : To contribute peace and security by promoting collaboration among the nations through education, science, and culture in order to farther universal respect for justice, rule of human rights and fundamental freedom for all.

e) What do you mean by Inquiry ?

Answer : This refers to investigation by a commission to ascertain the facts of the dispute.

f) What do you mean by 'De Facto Recognition' ?

Answer : When an existing state considers that the new state has not acquired sufficient stability, it may grant recognition to the latter provisionally which is termed 'de fact recognition'.

g) Explain Article 42 of the Indian Constitution.

Answer : Article 42 deals provision for just and humane conditions of work and maternity relief. "The state shall make provision for securing just and humane conditions of work and for maternity relief".

h) What is Amnesty International ?

Answer : Amnesty International is an NGO that protects human rights all over the world. Peter Benenson, a London lawyer established Amnesty International in 1961 for "Prisoners of Conscience".

i) What do you mean by 'Centre for Human Rights' ?

Answer : The Centre is located at Geneva to coordinate human rights activities. It provided staff for the commission, sub-commission, the human rights committee.

j) What do you mean by 'Arbitration' ?

Answer : A procedure for the settlement of dispute between states by a binding award on the basis of law and as a result of an undertaking voluntarily accepted.

Q. 2: Answer Any Four short explanatory / Definitional or Analytical notes : = 20.**a) U. N. High Commissioner for Human Rights.****Answer :**

The United nations General Assembly created the post of the U.N. High Commissioner for human rights in order to promote and protect the effective enjoyment by all civil, political, economic, social and cultural rights. Post was created on December 20, 1993 etc.

b) European Convention for Human Rights.**Answer :**

The idea of regional arrangements for the promotion and protection of human rights has been gaining recognition since the adoption of the Universal Declaration of Human Rights, 1948. The Convention was signed by the members of the Council. It came into force on Sept. 3, 1953. The Convention in the year 2000 has 4 contracting States.

The Convention has 11 Protocols:

Rights and Freedoms under Convention: like, Right to Life, Liberty, Freedom from torture, slavery, servitude, etc. – Implementing machinery.

European Commission of Human Rights (now not existed) and the European Court of Human Rights.

c) Role of NGO's in India.**Answer :**

NGO's in India like, PUDR and PUCL were established during emergency period – Main functions : works at grass root level day and night irrespective of religion, caste, colour, etc. [See Ans. to Q. No. 34].

d) Minority Commission.**Answer :**

The National Commission for Minorities Act, 1992 – Objects – Articles 29, 30 of Constitution of India – Composition of the Commission – Functions of the Commission (Section 9) – Powers of the Commission. Despite the safeguards provided for minorities in the Constitution of India and laws in force, it was decided to set up the National Commission for minorities whether based on religion or language;

Commission was constituted in the year, 1993 under the National Commission for Minorities Act, 1992;

It consists of President and the 5 members have to be from minorities;

It shall evaluate the progress of the development of minorities under the Union and States, look into specific complaints, conduct studies and suggest appropriate measures to the Government;

Lay annual report before Parliament;

Recently the Commission has helped the Sikh refugees from Afghanistan by relaxing the provisions of the Foreigners Act, and also to give amnesty (i.e. general pardon, especially for Offences Against the State "I.P.C., 1860) to all of them.

e) Role of Supreme Court in Protection of Human Rights.**Answer :**

Failure of Government in discharging their obligation results in the protection of the Human Rights by the judiciary. In the Indian context, since Independence, significant efforts have been made to strengthen the legal, constitutional, and institutional framework to protect and promote Human Rights. This work has been supported by an active and sensitive judiciary, in particular, the Supreme Court, through numerous judgments dating from the 1980s limiting the powers of government, enforcing accountability of the police and custodial institutions, while simultaneously expanding the notions of freedom and liberty to include civil and political as well as economic and social rights. These rights were developed by invoking a broad and purposive interpretation of fundamental rights, in particular, Article 21 of the Constitution of

India. The Courts recognized the need for non-discrimination and non-arbitrariness in decision-making through expanding the various provisions of the Constitution to give effect to various aspects of freedom. Even the Directive Principles were used to give meaning to rights guaranteed.

Various human rights are developed by interpretation of Articles 14, 19, 21, 32 and 136. – Case Law.

f) I. L. O.

Answer :

ILO. Was established after First World War on April 19, 1919 as an autonomous institution by the Treaty of Versailles, and was associated with the League of Nations. ILO. Became the first specialized agency associated with the United Nations.

ILO. Consists of a) International Labour Conference, known as General Conference, b) Governing Body, c) An International Labour Office (Secretariat). – Main functions.

ILO was founded in 1919 by the Treaty of Versailles;

ILO is U.N.'s first specialised agency which seeks the promotion of social justice and internationally recognised human and labour rights;

ILO formulates international labour standards setting minimum standards of basic labour rights, freedom of association, right to organise, collective bargaining, abolition of forced labour, equality of opportunity and treatment, etc.;

ILO also provides technical assistance to various labour bodies;

ILO has a unique tripartite structure with workers and employers participating as equal partners with Governments in the work of its governing organisations.

[For details, refer Answer to Q. No. 36 and Book on "Labour Law" by the Author].

Q. 3 : Solve Any Two problems :

= 12.

- a) States A, B, C, D, entered into a Treaty T. The treaty conferred the benefit of the most favoured nation in the economic relations with state X. The Treaty prohibited state Y from conducting any Nuclear Test ban. A had made certain reservations. The Treaty was registered.**

i) What do you understand by registration of the Treaty ?

Answer : Treaty is required to be registered with the Secretary General of the United Nations after it has come into force.

ii) Explain the consequences of non-registration.

Answer : Article 102 provides that no party to a Treaty not registered, may invoke that Treaty before any organ of the U.N.O. So party cannot approach to ICJ (International Court of Justice), General Assembly or Security Council.

- b) Hawkers were carrying on business on pavements of roads of Mumbai. They were permitted by the Municipal Authorities to carry on their business by occupying a particular area on the pavements, on payment of certain charges. But thereafter, the Municipal Authority did not allow them to continue with their trade.**

i) Is any fundamental human right of hawkers violated ? Identify and explain.

Answer : Fundamental Human Right given in Article 19 (1) (g) Freedom of trade, occupation, profession or business is violated.

ii) What is the remedy available to Hawkers ? Explain what restrictions are permitted on this right.

Answer : Remedies under Article 32 before the Supreme Court or under Article 226 before the High Court for violation of fundamental right in the term of Writs, Orders, Directions.

Restrictions under Article 19 (6) : interest of general public.

- c) A head constable and a constable were suspended for being involved in the death of an accused who was in their custody in the same police station. The accused was found hanging in the toilet.

i) Is there violation of any fundamental human right ? Identify and explain.

Answer : Yes, there is a violation of fundamental human right under Article 21 of the Constitution of India.

ii) How can the NHRC help the family of the deceased to get compensation ?

Answer : By making Inquiry/Investigation into the matter. Can approach the High Court and the Supreme Court under Article 226 and Article 32 of the Constitution of India.

Q. 4 : Solve Any Four :

= 48.

- a) CEDAW is considered as Magna Carta of Women's rights. Explain the various provisions of CEDAW.

Answer :

United Nations General Assembly adopted this convention on December 18, 1979. The Convention often described as an International Bill of Rights for women came into force in 1981. As on June 3, 2005, the Convention has 180 States parties. Convention consists bundle of rights for women, called Magna Carta of women's rights.

Various rights like – education, employment, health care, economic and social life – Women in rural areas – equality before law, etc.

- b) What are the salient features of protection of Human Rights Act, 1993 ?

Answer :

Main objects – For better protection of human rights in India.

Section 3 – Constitution of NHRC – Shall have eight Members – will be headed by Chairperson – SHRC and Human Rights Courts.

Power and Functions – Sections 12 and 13 – Criticism, etc.

- c) Write an essay on Human Rights and Child Abuse.

Answer :

Child abuse is gross violation of human rights.

Meaning of child abuse : means mistreatment with a child

What are the reasons and form of child abuse.

Legal protection to children, e.g. The Employment of Children Act, 1938.

The Child Labour (Prohibition and Regulation) Act, 1986, etc.

Case law.

- d) Discuss how an individual is the subject of International Law.

Answer :

Any entity which possesses international personality is called an international person or a subject of International Law.

Realist Theory, Fictional Theory, Functional Theory.

Reparations for Injuries case ... etc.

Important rights and duties of individuals in International Law.

Rights of individuals, Human Rights, Right to make petitions, etc.

- e) Critically examine the rights of Prisoners.

Answer :

Dignity of prisoners as persons in the reformatory process.

Deprived of certain rights but otherwise entitled to the basic freedoms guaranteed by the Constitution.

Citizen does not cease to be a citizen just because he has become a prisoner.

Rights in ICCPR, COI.

Case Law.

f) Define “Law of the Sea”. Explain briefly “The Geneva Conference on the Law of the Sea, 1958”.

Answer :

Law on the Sea were evolved during the time of Grotius and they were observed by the States as customary rules of International Law.

The General Assembly of United Nations on February 21, 1957 adopted a resolution for convening a Conference on Law of the Sea. In 1958, a conference was held in Geneva to consider a number of drafts prepared by the I.L.C. The Geneva Conference adopted 4 Conventions.

Convention on the Territorial Sea and Contiguous Zone, Convention on the High Seas,...The most important issue which was left undecided was the breadth of the territorial sea, etc.

[11]

[April, 2010 (24.04.10)]

With Solutions

Q. 1 : Answer in not more than Two sentences : = 20.

a) What do you mean by ‘De Facto Recognition’ ?

Answer : When an existing state considers that the new state has not acquired sufficient stability, it may grant recognition to the latter provisionally which is termed ‘de facto recognition’.

b) What do you mean by ‘Rebus Sic Stantibus’ ?

Answer : The maxim rebus sic stantibus asserts that a treaty may be terminated if there occurs a fundamental change in the circumstances under which it was concluded.

c) What do you mean by ‘Agenda – 21’ ?

Answer : It is the most exclusive document of the Rio Summit. This Commission was set up on 16th February, 1993. It was set up on the principle of “equitable geographical distribution” to ensure a balance between the developed and the developing world.

d) Write any three Economic, Social and Cultural Rights.

Answer : According to International Covenant on Economic, Social and Cultural Rights, 1966, – 1) Right to work [Article 6]; 2) Right to Social Security [Article 9]; and 3) Right to Physical and Mental Health [Article 12] are the economic, social and cultural rights.

e) What do you mean by U.N. Commissioner for Human Rights ?

Answer : The United Nations General Assembly created the post of the U.N. High Commissioner for human rights in order to promote and protect the effective enjoyment by all civil, political, economic, social and cultural rights.

f) Define International Law.

Answer : International Law regulates the relations of States with one another. Oppenheim's definition – "The law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other".

g) Explain Article 16 (1) of the Indian Constitution.

Answer : Article 16 of the Constitution of India deals with "Equality of opportunity in matters of public employment – Article 16 (1) states that – "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".

h) What do you mean by Principle of Sovereign Equality ?

Answer : Article 2, para 1 of the UN Charter mentions about 'Sovereign equality of all its members' which means, all the countries of the world have equal status irrespective of their size and resources.

i) What do you mean by child labour ?

Answer : Under Article 24 of the Constitution of India, if a child below 14 years of age is employed to work in any factory or mine or engaged in any other hazardous employment, it will be considered as a child labour and it is prohibited under Article 24 of the Constitution.

j) What the three main objects of CEDAW ?

Answer : 1) To promote various rights like – education, employment, health care, economic and social life; 2) To eliminate discrimination against women; 3) To promote development and empowerment of women in rural areas; – equality before law; etc.

Q. 2 : Answer Any Four short explanatory/definitional or analytical notes : = 20.

- a) Explain the Theories of Recognition.
- b) Continental Shelf.
- c) UNICEF.
- d) Indian and Universal Declaration of Human Rights.
- e) Role of Supreme Court in protection of Human Rights.
- f) National Human Rights Commission (NHRC).

Q. 3 : Solve Any Two problems :

= 12.

- a) A head constable and a constable at Dadar police station have been suspended for being involved in the custody death of an accused in the same police station. The accused was found hanging in the toilet.

i) Can *Suo Moto* action be initiated in such cases and what do you mean by *Suo Moto* ?

Answer : Yes, *suo moto* action can be initiated in this case. *Suo moto* means 'on its own'. When Court comes to know about such an incident reported in the Press or when such an incident is brought to the notice of the Court, Court can take a cognizance of it.

ii) What action can be taken by the Court with respect to such *Suo Moto* petition ?

Answer : There is a violation of fundamental human right under Article 21 of the Constitution of India. The High Court under Article 226 of the Constitution of India by its Writ jurisdiction can order Inquiry/Investigation into the matter and the head constable if found guilty for custodial death, he can be punished for the offence of murder.

- b) A prisoner was given by jail authority barbaric and inhuman treatment which was international.

i) Is any human right violated in the above case ? Identify and explain.

Answer : Yes, it amounts to the violation of prisoner's human rights. Article 5 of the Universal Declaration of Human Rights and also under Article 7 of the International Covenant on Civil and Political Rights, the rights of the prisoner are violated.

ii) Write relevant case and explain the decision of the court.

Answer : *D. K. Basu v/s. State of West Bengal* – The Supreme Court held that the prisoner cannot be given any inhuman treatment as it is violative of his fundamental right to live with dignity; *Rudal Shah v/s. State of Bihar*, AIR 1983 SC, 1086.

c) A mail steamer flying a French flag and a Turkish Vessel collided in the high seas. The Turkish Vessel sank of 7 persons were killed. The French steamer proceeded in its voyage and entered Turkish waters. Here, the Captain was arrested. He was tried and punished. The French Government challenged the jurisdiction of Turkey in punishing the Captain. The case was decided.

i) What do you mean by 'High Sea' ?

Answer : High Sea – Parts of the sea which are not included in the territorial waters. [See Geneva Convention on High Sea, 1958, Article 1].

ii) What is the name of the Case and which court decided the Case ?

Answer : *S. S. Lotus Case* (1927) PCIJ series A. No. 10, Permanent Court of International Justice.

Q. 4 : Solve Any Four :

= 48.

- a) What are the salient features of CEDAW ? Explain in detail.
- b) State and explain what are Human Rights. Critically examine the rights of Convicts and Prisoners.
- c) Discuss briefly the various peaceful means of settlement of disputes.
- d) Explain in detail the main objects, significance and importance of ICCRR in India.
- e) Define 'treaty' and explain kinds of treaties in detail. Explain who can be parties to a treaty.
- f) Explain in detail the terms : -
 - i) Freedom of the High Seas.
 - ii) Limitation on the Freedom of the High Seas.
 - iii) Exclusive Economic Zone (EEZ).

[12]

[November, 2010 (23.11.10)]

With Solutions

Q. 1 : Answer in not more than 2 sentences (2 marks each) :

= 20.

a) What do you mean by 'Fictional Theory' ?

Answer : The theory that is based on the fiction that duties and rights of the states are only the duties and rights of men who compose them (i.e. states), and therefore, it is ultimately individuals who are the subjects of International Law.

b) What do you mean by 'Innocent Passage' ?

Answer : It is the right of foreign merchant vessels to have innocent passage through the territorial waters of a state.

c) What do you mean by UNICEF ?

Answer : It means United Nations Children's Fund. UNICEF was established by the United Nations General Assembly on December, 11, 1946. It provides long term humanitarian and development assistance to children and mother.

d) What do you mean by 'Agenda - 21' ?

Answer : Agenda 21 is a comprehensive plan of action which lays down future course of action in relation to environment and development made by General Assembly of the United Nations. The issues to set out specific programme, such as, poverty, consumption patterns, health, human settlements, financial resources and technological transfer, other issues concerning environment and development.

e) Define Human Rights.

Answer : Human rights are the rights which are possessed by all human beings irrespective of their race, caste, creed, sex, nationality, language, etc. Every human being is entitled to some basic rights, without which he cannot live as a human being. All these rights which are essential for the maintenance of human dignity, may be called as human rights.

f) Write any three objectives of UDHR.

Answer : 1) Prohibition against torture, inhuman or degrading treatment; 2) Right to life, liberty and security of persons; 3) Right to social security.

g) What do you mean by ECOSOC ?

Answer : It means Economic, Social and Cultural rights.

h) What do you mean by European 'Social Charter' ?

Answer : The European Social Charter is a multilateral treaty signed at Turin on October 18, 1961, and came into force on February 26, 1965. It is with view to develop and protect social and economic rights and to achieve greater unity between its members for the purpose of safeguarding and realizing the ideas and principles which are their common heritage.

i) What is the meaning of Right to Development ?

Answer : Right to Development is the term stating that the development encompasses the development of economic, social, cultural and political process for the development of personality of human beings.

j) Explain Article 23 of the Indian Constitution.

Answer : Prohibition of traffic in human beings and forced labour (Article 23):

- (1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;
- (2) Nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Q. 2 : Answer Any Four out of six short explanatory/Definitional or Analytical (5 marks each) : = 20.

- a) Explain the Theories of Recognition.
- b) Rights of Coastal States.

- c) ILO.
- d) Commission on Human Rights.
- e) Right to Information.
- f) Minority Commission.

Q. 3 : Solve Any Two problems out of three (6 marks each) : = 12.

- a) On October 22, 1946, two British warships passing through the strait of Corfu were struck with mines in Albanian territorial waters with the result that H.M.S. Sarmarez sank while H.M.S. Volage was seriously damaged. The Channel was swept by the British Navy on November 12th and 13th, without obtaining consent of the Albanian authorities. A newly laid field of anchored mines was discovered. Great Britain alleged that Albania was responsible for the presence of the mines in the Channel.

i) What is the name of the Case ? And which court decided the Case ?

Answer : Corfu Channel Case, the International Court of Justice [ICJ].

ii) What was the decision ?

Answer : The International Court of Justice ruled that, during peace time the warships of the other states may pass through the territorial waters of the state. The Court held that, Albania was guilty of causing loss to the British Ships by firing at them and laying mines in that part of Sea. The United Kingdom did not violate the sovereignty of the Peoples Republic of Albania by acts of the British Navy in Albanian waters. Albania was held liable to pay pounds 8,43,947 to the United Kingdom.

- b) Mr. 'X' was an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance.

i) Which constitutional right of Mr. 'X' has been violated ?

Answer : Article 21. Protection of life and personal liberty; and Article 39A – Equal justice and free legal aid.

ii) Write relevant Case and explain the decision of the court.

Answer : Hussainara v/s. Home Secretary, State of Bihar, AIR 1979 SC 1369 : (1980) 1 SCC 98.

- c) Mr Ram was deprived of his right to go abroad without a law by the state prescribing the procedure for so.

i) Is it violation of Human Rights ? Explain which Article of the Indian Constitution has been violated.

Answer : Yes, it is the violation of Human Rights according to Article 21. Protection of life and personal liberty.

ii) Which famous Case the aforesaid facts relate to ? Explain what was the decision in this Case.

Answer : Satwant Singh Swaney v/s. D. Ramrathnam, AIR 1967, SC 1836 : (1967) 3 SCR 525 : (1968) 70 Bom. LR 1.

Q. 4 : Solve Any Four out of six (12 marks each) : = 48.

- a) Discuss briefly the various peaceful means of settlement of disputes.
- b) Explain in detail :
 - i) Freedom of the High Seas.
 - ii) Exclusive Economic Zone.
- c) What are the salient features of Convention on Rights of Child 1989 ?
- d) Discuss how an individual is the subject of International Law.

- e) Write an essay on "Human Rights and Woman".
- f) Define Treaties and its Kinds. Explain the term 'reservation' in Treaties.

[13]

[April, 2011 (26.04.11)]

With Solutions

Q. 1 : Answer in not more than 2 sentences (2 marks each) : = 20.

- a) Write any two objectives of United Nations Charter.

Answer : i) to reaffirm faith in fundamental human rights, ii) to establish justice and respect for international obligations, iii) to promote social progress and better standard of life, etc. (any 2).

- b) Explain Article 47 of the Indian Constitution.

Answer : Duty of the State to raise the level of nutrition and the standard of living and to improve public health – "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

- c) What do you mean by UNEP ?

Answer : UNEP is the product of Stockholm Conference of 1972. It was set up by U.N.O. General Assembly in 1972. It is *jusi libe* programme, a subsidiary organ of the General Assembly.

- d) What do you mean by 'Mediation' ?

Answer : When the third party participates in the discussion along with the disputed States, and also gives its own suggestions in resolving the dispute is known as mediation.

- e) What do you mean by 'Good Offices' ?

Answer : When the third party arranges a meeting of the disputed parties so that they may settle the disputes by negotiations or wherein..... The act is called good offices.

- f) Define the term 'Environment'.

Answer : Section 2 (a) of the Environmental Protection Act, 1986 – "Environment includes water, air, land and its interrelationship which exists in and between water, air and land, and human beings, other living creatures, plants, micro-organism and property."

- g) Define 'International Law'.

Answer : Most of the Classical jurists laid down that International Law regulates the relations of States with one another. (Students may give definition by Oppenheim).

- h) What do you mean by term 'Treaty' ?

Answer : The form treaty means a written agreement by which two or more states or international organizations create or intend to create a relation between themselves.

i) What do you mean by 'Jus Cogens'?

Answer : A treaty can be declared void in International Law, if it conflicts with a peremptory norm and such treaty shall be considered as void ab initio. This is called jus cogens.

j) What do you mean by 'Non use of Force'?

Answer : It is one of the principal to settle the disputes between or among Nations. Para 3 of Article 2 of United Nations Charter = All members shall settle their international disputes by peaceful means.

Q. 2: Answer Any Four out of six short explanatory/Definitional or Analytical (5 marks each): = 20.

a) Child Abuse and Human Rights.

Answer :

- Child abuse is gross violation of human rights –
- Meaning of child abuse : means mistreatment with a child....
- What are the reasons and forms of child abuse –
- Legal protection –
- Cases.

b) International Law is a weak Law.

Answer :

- State practice, as well as, the practices of the international judicial institutions affirm the legal character of International Law.....
- Its rules are not as effective as the rules of Municipal Law.
- Rules of International Law as a result of international treaty and customs are not
- There is no court in the true sense
- Enforcement measures, etc.

c) Contiguous Zone.

Answer :

- Contiguous Zone is that part of the sea which is beyond and adjacent to the territorial waters of the coastal States..
- See Geneva Convention on Contiguous Zone of 1958 – Article 24, para I and Convention of 1982.
- Limits of the C. Z.
- Indian position on Contiguous Zone.

d) Rebus Sic Stantibus.

Answer :

- The maxim rebus sic stantibus asserts that a treaty may be terminated if there occurs a fundamental change in the circumstances under which it was concluded.
- It is known as 'clausul'.
- It became a general principle.....
- Section 56 of the Indian Contract Act also recognises the doctrine of frustration.
- The principle has been invoked as a ground for the termination of the treaty....
- United Kingdom v/s. Iceland and Federal Republic of Germany v/s. Iceland., etc.

e) Sovereign Equality of states.

Answer :

- Every state is presumed to be sovereign by virtue of sovereign power. Every state is capable to decide its own policies. No other State can intervene in the domestic or internal affairs and no State can encroach upon the territories of others.
- All countries or states are equal....
- Reasons for sovereign equality.
- Effects of sovereign equality.

f) **American convention on Human Rights.**

Answer :

- It came into force on July 11, 1978.
- Preamble of the Convention stated that the essential rights of a man are not derived from one's being a national of a certain state
- Civil and Political Rights.
- Article 32 : Personal responsibilities.
- Economic, Social and Cultural Rights.
- Commission and Court.

Q. 3 : Solve Any Two problems out of Three (6 marks each) : = 12.

- a) **Ram was an under-trial handcuffed during transit between the jail and the court for the trial of his case..**

i) **Which constitutional right of Mr. Ram was violated ?**

Answer : Article 21 of the Constitution of India – Article 5 of the UDHR and Article 10 of the ICCPR. (Right to Liberty)

ii) **Write relevant case and explain the decision of the court.**

Answer : Prem Shankar Shukla v/s. Delhi Administrator – The Supreme Court held that even in extreme circumstances, where handcuffs are to be put on the prisoner, the authority must record the reasons for doing so and must show it to the presiding Judge and get his approval

- b) **Poonam, a fresh graduate was in search of a good job. She got a good job but involved a lot of touring. Immediately, she was asked to go to Goa with her boss. All throughout her journey, the boss sexually exploited her and made illicit remarks.**

i) **Define sexual harassment. Enumerate any three guidelines laid down by the Supreme Court.**

Answer : Define sexual harassment – Any three guide lines, like : Appropriate working conditions for health, work leisure, hygiene, upon complaint, onus on employer to make appropriate investigations – complaint mechanism in each department, etc..

ii) **Write relevant Case Law.**

Answer : Vishakha v/s. State of Rajasthan, AIR, 1997 SC 3011.

- c) **A mail steamer flying a French flag and a Turkish Vessel collided in the high seas. The Turkish Vessel sank of 7 persons were killed. The French steamer proceeded in its voyage and entered Turkish-waters. Here, the captain was arrested. He was punished. The French Government challenged the jurisdiction of Turkey in punishing the captain. The Case was decided : -**

i) **What do you mean by 'High Sea' ?**

Answer : High Sea – Parts of the sea which are not included in the territorial waters. [See Geneva Convention on High Sea, 1958, Article 1].

ii) **What is the name of the Case and which court decided the Case ?**

Answer : S. S. Lotus Case, (1927) PCIJ series A No. 10, the Permanent Court of International Justice.

Q. 4 : Solve Any Four out of six (12 marks each) :

= 48.

a) State and explain, what are human rights ? Critically examine the rights of convicts and prisoners.

Answer :

a) Inalienable and indivisible rights.

b) Natural and fundamental rights.

c) First and second and third generation rights i.e. civil and political rights, economic, social and cultural rights and collective rights, etc.

Rights of convicts and prisoners –

a) Dignity of convicts and prisoners as person in the reformatory process.

b) Deprived of certain rights but otherwise entitled to the basic freedoms guaranteed by the Constitution.

c) A citizen does not cease to be a citizen just because he has become a prisoner or convicted person.

d) Some important rights should be mentioned, such as, right to live with human dignity – right to punishment as prescribed by law – right to be free of fetters or handcuffs – right to communication, information, etc.

b) What are the salient features of Universal Declaration of Human Rights, 1948 ?

Answer :

UDHR – UDHR is the first international declaration on human rights. It is called Magna Carta of human rights. It was adopted by United Nations General Assembly in December 10, 1948. 10th December is the Human Rights Day.

It consists 30 Articles – Crucial Preamble.

Article 1 – spirit of brotherhood.

Article 2 – No discrimination.

Various Civil and political rights and Economic, social and cultural rights, etc.

c) Explain in detail the role of the Supreme Court in protection of Human Rights in India.

Answer :

• Failure of the Governments in discharging their obligation results in the protection of human rights by the judiciary. In the Indian context, since independence, significant efforts have been made to strengthen the legal system, Constitutional and institutional framework to protect and promote human rights.

• As a custodian of records

• Various human rights are developed by invoking a broad and purposive interpretation of fundamental rights

• Various Articles of Indian Constitution.

• Case Law.

d) Write an essay on any three “NGO’s in India”.

Answer :

• Any three NGO’s in India, like PUCL, PUDR, etc.

• Functions – Role and constitution of NGO’s.

e) What do you mean by ‘Recognition’ ? Explain in detail theories and forms of recognition.

Answer :

- When a State is acknowledged by other existing States, is known as 'recognition' of State.
- Theories – Constitutive and Declaratory theory.
- Forms – State may be recognised in two ways, they are –
Express recognition and implied recognition.

f) How does the Constitution of India safeguard interest and rights of women ?

Answer :

- Preamble – The Preamble is the key to the Constitution. It does not discriminate man and woman but it treats them alike.
- Fundamental rights – Article 15, 16, Article 14, 19, 21, 23, etc.
- Directive principles of state policy – Article 38, 39 (a), (d) and (e), Article 42, 44 and 45 deal with the welfare and development of women.
- Reservations.
- Fundamental duty.
- Case Law.

[14]

[November, 2011 (29.11.11)]

With Solutions

Q. 1 : Answer in not more than 2 sentences (2 marks each) : = 20.

a) What do you mean by 'Ozone Depletion' ?

Answer : Ozone Depletion means "Destruction of the upper atmospheric layer of ozone gas caused by substances formed from breakdown of ozone depleting substance".

b) What do you mean by 'General Assembly' of United Nations ?

Answer : General Assembly is one of the organs of United nations, has been empowered to discharge certain functions.

c) Write any three functions of UNEP.

Answer : i) to keep under review the world environmental situation. ii) to receive and review the world environmental situation. iii) to provide general policy guidance, etc.

d) Explain Article 39 (d) of the Indian Constitution.

Answer : "Equal pay for equal work".

e) What do you mean by 'Land-Locked States' ?

Answer : A state , whose boundaries are entirely surrounded by land is called "Land-locked state".
Convention on the Law of Sea, 1982 Article 124 (1) (a) states "state which has no sea coast".

f) What do you mean by 'Suo Moto' ?

Answer : Suo moto means, “on its own”. Suo moto action can be initiated by the Court upon receiving news or any letter.

g) What are the three main objects of UDHR ?

Answer : i) protection of human rights. ii) establish a global society with social justice. iii) promote social progress. iv) better standards of life, etc. (state any three).

h) What do you mean by ‘ILO’ ?

Answer : ILO was founded in 1919. First UN’s specialised agency which seeks the promotion of social justice, etc.

i) What do you mean by ‘Recognition’ ?

Answer : When one state is acknowledged by other existing states, is known as recognition of state or government.

j) What do you mean by ‘non-intervention’ ?

Answer : Every state has a right to manage its affairs according to its own wishes. This right has been granted on the basis of state sovereignty. No state has right to interfere in the affairs of other state, this is known as non-intervention.

Q.2: Answer Any Four out of Six Short Explanatory Definitional or Analytical (5 marks each):=20.

a) UNICEF.

Answer :

The United Nations Children’s Fund (UNCF) was established by General Assembly on December 11, 1946. In 1953, its name was shortened from United Nations International Children’s Emergency Fund (UNICEF).

Head quarter is in the New York city.

Provides long-term humanitarian and developmental assistance to children and mother in developing countries.

It is a voluntary funded Agency.

Promotes the health and well-being of children.

It was awarded Nobel peace prize.....

b) Rights of Aliens.

Answer :

They possess all those procedural rights which are available to the citizens in a state. They also possess substantive rights which are the rights of the citizens of the country. However, civil and political rights are denied to them.....

c) Minority Commission.

Answer :

- The National Commission for Minorities Act, 1992.
- Objects – Articles 29, 30 of the Constitution of India.
- The composition of the Commission – the Commission consists of
- Functions – Section 9.
- Powers of the Commission.

d) Amnesty International.

Answer :

It is a non-governmental organisation (NGO) that promotes human rights. Founded in the U.K. in 1961. Amnesty International draws attention to human rights abuses and campaigns for compliance with international standards. It works to mobilise public opinion in the belief that it is this which has the power to exert pressure on those who perpetrate abuses.

Specific Aims –

- Abolish the death penalty.
- End extra-judicial executions and disappearances.
- Ensure prison conditions meet international human rights standards, etc.

e) Modes of Recognition.

Answer :

Recognition may be of two kinds :

- 1) De facto Recognition; and
- 2) De jure Recognition.

Differences between the both.

Case Law.

f) Human Rights and Environment.

Answer :

- Right to clean and pollution free environment is greatest human right. Today it is a part and parcel of Article 21 of the Constitution of India.
- Various constitutional provisions –
42nd Amendment, Articles 47, 48-A, 51-A (g), Articles 21, 32 and 226.
- Conferences like Stockholm Conference, etc.
- Case Law.

Q. 3 : Solve any 2 problems out of 3 (6 marks each) :

= 12.

- a) The Pequette Habana Fishing boat and another fishing boat Lola flying the Spanish flag and belonging to Spanish subjects were captured by a United States Warship in the Blockade of the North Coast of Cuba. They were brought before the Court of condemnation.
- i) Whether, under Customary International Law, fishing boats were exempted from capture ? Give reasons.

Answer : Yes, fishing boats were free from capture.

ii) What is the name of the case and which court has jurisdiction ?

Answer : Pequete Habana and Lola Case (1900) 175 US Reports 677. The Supreme Court of U.S.A. has the jurisdiction to try the case.

- b) A head constable and constable were suspended for being involved in the death of an accused who was in their custody in the same police station. The accused was found hanging in the toilet.

i) Is there violation of any Fundamental Human Right ? Identify and explain.

Answer : Yes, there is violation of the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

ii) How can the NHRC help the family of the deceased to get compensation ?

Answer : NHRC can make Inquiry/Investigation, can also approach to the H. C. and the S. C. under Article 226 and 32 of the Constitution of India.

c) The Air-India authority makes a regulation and provides that, an Air-hostess would retire from the service attaining the age of 35 years or on marriage within 4 years of service or on first pregnancy, whichever occurred earlier. In this case, a petitioner Air-hostess terminated from her job on the ground of her first pregnancy. She challenged the rules and regulations of Air-India authority before the Supreme Court.

i) Is it a violation of Human Rights ? Explain your answer with the help of a case law.

Answer : Yes, there is a violation of fundamental right to equality guaranteed under Article 14 and 15 of the Constitution of India – Air India v/s. Nargesh Mirza.

ii) Explain in detail the constitutional provisions for protection of Air-hostess rights.

Answer : Article 14 – Equality before the law and equal protection of law; – Article 15 – No person shall be discriminated only on the ground of caste, creed, religion, place of birth and sex.

Q. 4 : Solve Any Four out of six (12 marks each) :

= 48.

a) Discuss briefly the various peaceful means of settlement of disputes.

Answer :

- The Charter of the United Nations has recognised the peaceful settlement of disputes.
- Article 33 para one of the Charter.
- Extra-judicial modes of settlement and judicial settlement.
- Negotiation, Mediation, Good Offices, Conciliation, Inquiry....., etc.

b) What are the salient features of ICCPR, 1966 ?

Answer :

The UDHR, 1948 is a milestone in the history of the human rights. It has given the way to follow a series of treaties adopted within the United Nations, including ICCPR.

ICCPR represents “First Generation” of human rights. It has 53 Articles. This convention provides Civil and Political rights.

- Two optional protocols.
- India is a party of this convention.
- Most important civil and political rights, like, right to life, liberty, right against torture, etc.
- Part III of the Constitution of India and ICCPR, etc.

c) Write an essay on “Human Rights and Child Abuse”.

Answer :

- Child abuse is gross violation of human rights.
- Meaning of child abuse – mistreatment, torture of a child.
- Various reasons and forms of child abuse.
- Legal protection to children, like, The Employment of Children Act, 1938, Child Labour Act, 1986, etc.
- Case Law.

d) Explain steps which are generally adopted in concluding a treaty.

Answer :

- Accrediting of persons by the contracting states..
- Negotiation.
- Adoption of the Text.
- Consent by the states.
- Consent by signature, exchange of instruments.
- Consent by ratification.
- Entry into force.

- Registration and publication.
- Pacta Sunta Servanda.

e) Discuss the role of NHRC in the protection of Human Rights.

Answer :

NHRC was established under PHRA, 1993.

- Main objects of the NHRC.
- Constitution/composition of the NHRC.
- Powers and functions of the NHRC.

f) Discuss the law relating to –

i) Territorial Sea.

ii) EEZ

Answer :

i) Territorial Sea :

- Sovereignty of the state is confined not only to the waters and land lying within its boundaries.

- Marginal Zone :

- May be defined as that part of the sea which is adjacent to the coast and over which International Law permits the Coastal States to exercise sovereignty, subject only to a general right of innocent passage on the part of foreign shipping.

- breadth of Territorial Sea.

- Rights of states over territorial sea, etc.

ii) EEZ :

The concept of EEZ was initiated by Kenya in 1972. The EEZ is an area beyond and adjacent to the territorial sea extending upto 200 nautical miles seaward from the coast baselines from which the breadth of the territorial sea is measured.

- Rights of the coastal states over EEZ.

- Duties of the coastal states.

- Rights of other states.

[15]

[May, 2012 (11.05.12)]

With Solutions

Q. 1 : Answer in 2-3 sentences each of the following : = 20.

a) What are the sources of International Law ?

Answer : The sources of International Law are – 1) Custom; 2) Custom and Usage; 3) International Text Papers other than Treaties.

b) What is innocent passage ?

Answer : It is the right of foreign merchant vessels to have innocent passage through the territorial waters of the state.

c) What is continental shelf ?

Answer : The continental shelf is the sea-bed and sub-soil of the submarine areas adjacent to the coast, but outside the area of territorial sea, to a depth of 200 meters or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

d) **Explain the concept of Treaty.**

Answer : The term 'treaty' is a written agreement by which two or more states or International Organizations create or intent to create a relation between themselves operating within the sphere of International Law.

e) **Explain CESC.**

Answer : Covenant on Economic, Social and Cultural Rights.

f) **What is Amnesty International ?**

Answer : Amnesty International is an International Non Governmental Organization (NGO) that protects human rights all over the world. Peter Benenson, a London lawyer established Amnesty India, in 1961 for 'Prisoners of conscience'.

g) **Explain the term EEZ.**

Answer : The term means Exclusive Economic Zone. It is an area beyond and adjacent to the territorial sea extending upto 200 nautical miles seaward from the coastal baselines from which the breath of the territorial sea is measured.

h) **Write down the main object of Stockholm Conference, 1972.**

Answer : The main object of Stockholm Conference, 1972 was to solve the global problem of protection and improvement of the human environment by international conference on universal level.

i) **Explain the Directive Principles relating to Rights of Workers.**

Answer : The Directive Principles related to right of workers is provided under Article 43 of the Constitution of India which provides living wages, etc. for workers.

Living wages, etc. (Article 43) : The state shall endeavour to secure , by suitable legislation or economic organization or by any other way, to all workers, agricultural, industrial or otherwise, work, a living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

j) **Explain 'Rebus sic stantibus'.**

Answer : Rebus sic stantibus asserts that a treaty may be terminated if there occurs a fundamental change in the circumstances under which it was concluded.

Q. 2 : Write short notes on Any Four of the following : = 20.

- a) UNESCO.
- b) Peaceful Settlement of Disputes.
- c) European Convention on Human Rights.
- d) Directive Principles and Human Rights.
- e) Theories of Recognition.
- f) Human Rights and Women.

Q. 3 : Solve Any Two of the following situational problems : = 12.

- a) In the Smooth-line carpet industry, children below 14 were employed for carpet weaving.

i) Is there any violation of child rights ? Explain your answer with related enactment.

Answer : Yes, there is a violation of child rights under Article 24, as children under 14 years of age are banned from doing any work-employment.

ii) State the landmark case. Explain the directive principles related to child rights.

Answer : M.C. Mehta v/s. State of Tamilnadu, [AIR, SCC 1997, p.669].

b) A woman belonging to Belgium, Mrs. Anna, a tourist was gangraped by railway employees at Yatri Niwas of Jaipur. A case was filed on behalf of her for compensation.

i) Is there any violation of fundamental rights ? Explain. Write the decision with reasons.

Answer : Yes, there is a violation of fundamental rights which are provided under Articles 21 & 22 of the Constitution of India. Article 21 guarantees right to life and personal liberty, and Article 22 guarantees right to protection against arbitrary arrest and detention.

ii) Whether fundamental rights are available to non-citizens? Explain with the help of case law.

Answer : Yes, fundamental rights are available to non-citizens also. In the Judgement given in the Chairman, Railway Board & Others v/s. Mrs. Chandrima Das, [2000 (1) SCC p.265], the Supreme Court observed that the declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly so the applicability of UDHR and principles may have to be read if need be, into the domestic jurisprudence.

It was decided in Anwar v/s. State of Jammu & Kashmir, [AIR 1971 SCC p.337], the protection under Articles 21 & 22 are available not only to citizens but also to persons which would include non-citizens.

c) Article 380 of the Treaty of Versailles, 1919, provides that the Keil canal shall remain open for merchants and warships of all those states who are not at war with Germany. On March 21, 1921, the German authorities stopped a British ship on the ground that it contained military equipment being shipped to Poland who was at war with Russia.

i) Define treaty. Write the contentions of Germany and state the name of the case.

Answer : Treaty means a written agreement by which two or more states or International Organizations create or intend to create a relation between themselves operating within sphere of International Law.

Contentions of Germany was - as the ship contained military equipment, the German officers contended that if the passage shall be allowed, it would violate its neutrality - Case : S. S. Wimbledon [(1923) Series A. No. 1].

ii) State the name of the Court which has decided the case with the decision.

Answer : S.S. Wimbledon [(1923) Series A. No. 1], Permanent Court of International Justice Court (PCIJ). The Court held that it was the duty of Germany to give passage to S.S. Wimbledon in accordance with Article 380 of the Treaty of Versailles. Reparation was also required to be given by Germany for withholding the passage.

Q. 4 : Answer Any Four of the following : = 48.

- Explain fundamental right and directive principles related to protection of child rights.**
- Explain the human rights available to convicts and prisoners with the help of case laws.**
- Define Human Rights under the Protection of Human Rights Act, 1993. Explain the role of NHRC.**
- Explain : i) Non-intervention, ii) Non use of force.**
- Explain : i) U.N Declaration of Human Rights, ii) ILO.**
- Discuss : i) Individual as subject of international law, ii) State territory.**

[16]

[December, 2012 (08.12.12)]

With Solutions

Q. 1 : Answer in One or Two sentences : = 20.

a) Define International Law.

Answer : Body of legal rules governing interaction between sovereign states (Public International Law) and the rights and duties of the citizens of sovereign states towards the citizens of other sovereign states (Private International Law).

According to Bentham's classical definition, international law is a collection of rules governing relations between states.

b) What is CEDAW ?

Answer : Convention on Elimination of Discrimination of any Form Against Women.

c) What is Continental Shelf ?

Answer : A submerged border of a continent that slopes gradually and extends to a point of steeper descent to the ocean bottom.

Under the United Nations Convention on the Law of the Sea, the name continental shelf was given a legal definition as the stretch of the sea-bed adjacent to the shores of a particular country to which it belongs.

d) Write two functions of the Human Rights Commission.

Answer : To inquire suo moto or on a petition presented to it by victim or any person on his behalf into complaints of – a) violation of human rights or abetment thereof or b) negligence in the prevention of such violation by a public servant. c) It may intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court. d) It shall visit any jail or any other institution under the control of the State Government. e) Review the safeguards. f) Shall review factors, including acts of terrorism and the safeguards and make appropriate recommendations. g) Shall study the treaties and other international instruments on human rights and make recommendations for their effective implementation.) undertake and promote in the field of human rights. (state any two)

e) What is the object of UNICEF ?

Answer : a) To provide a clinical service assessing and treating children with diseases through its country programmes. b) To promote equal rights of children, girls and women. c) Support their full participation in the political, social and economic development of their communities. d) Support children who are in need by providing them food and education.

Another important objective of UNICEF is to ensure countries abide by the Convention on the Rights of the Child. This includes mobilizing political will and material resources to help developing countries improve their ability to provide services for children and their families. (state any two).

f) Give two landmark judgements on Rights of Women.

Answer : 1) Vishakha v/s. State of Rajasthan. 2) Nargesh Mirza v/s. Air India.

g) What is non-intervention ?

Answer : A foreign policy of staying out of other countries' disputes.

Non-intervention or non-interventionism is a foreign policy which holds that political rulers should avoid alliances with other nations, but still retain diplomacy, and avoid all wars not related to direct self-defence.

This is based on the grounds that, a state should not interfere in the internal politics of another state, based upon the principles of state sovereignty and self-determination.

h) What is *Jus Cogens* ?

Answer : Jus Cogens is a fundamental principle of international law which is accepted by the international community of states as a norm, from which no derogation is ever permitted.

There are certain principles of international law which all the states must observe.

i) What is mediation ?

Answer : Mediation, as used in law, is a form of alternative dispute resolution (ADR), is a way of resolving disputes between two or more parties. A third party, the mediator, assists the parties to negotiate their own settlement (facilitative mediation). In some cases, mediators may express a view on what might be a fair or reasonable settlement, generally where all the parties agree that the mediator may do so (evaluative mediation).

j) What is ILO ? State two objects of ILO.

Answer : International Labour Organization. The ILO has four strategic objectives – 1) Promote and realize standards and fundamental principles and rights at work. 2) Create greater opportunities for women and men to decent employment and income. 3) Enhance the coverage and effectiveness of social protection for all. 4) Strengthen tripartism and social dialogue. (any two).

Q. 2 : Write short notes on Any Four :

= 20.

- a) Directive Principles of State Policy and Human Rights.
- b) Role of NGO's in India and Human Rights.
- c) American Convention on Human Rights.
- d) International Court of Justice.
- e) National Commission for Minorities.
- f) Human Rights of Prisoners and Indian Constitution.

Q. 3 : Answer Any Two Situational Problems :

= 12.

a) A small girl child was found abandoned on a railway platform. Some travellers informed the Railway Police. The child was taken into custody and sent to Children Home.

i) What rights are enumerated in the Indian Constitution for children ?

Answer : Article 21 – Right to free and compulsory education. Article 24 – No child below 14 years should be employed. Article 15 (3) – Special provisions can be made by Government for children.

ii) What is the Indian position on the Convention of Rights of Child ?

Answer : India is a signatory to the Convention on Rights of Child. India has also ratified this Convention, and accordingly, passed Juvenile Justice (Care and Protection of Children) Act, 2000, to protect and safeguard – Compulsory primary education – Commission for Protection of Child Rights Act, 2005 was enacted – Commission for Rights of Children was established.

b) A cyclist on world tour, visits India. He aims to explore India through his cycle expedition. After one week, he goes missing. His parents come to India to search for him.

i) Are fundamental rights available to non-citizens ? Explain.

Answer : Yes, Article 14, Article 21 and other rights are available, except Article 19 – special civil and political rights are denied to them – they are prohibited from joining civil services.

ii) In the light of the above situation, explain the duties of the State/Government towards foreign nationals.

Answer : An FIR can be filed and investigation can be carried out as it is done in case of a missing Indian. States should follow moral standards for civilized nation. If there is a claim for compensation, then the State may grant it. The Government should provide best assistance to the family members and the Embassy of the national who is missing and provide the information.

c) Nepal is a land-locked state which has no access to sea. There are several such other states in the world that are land-locked states.

i) Do Land-locked states enjoy free access to the sea ? Explain.

Answer : Yes, land-locked states have free access to and from the sea on equal terms with coastal states. The transit state has all rights to take necessary measures. Nepal enjoys through India. Agreement between two states on reciprocal basis can be followed to overcome any conflict of interest.

ii) What term is used for the state which allows its territory to be used by the Land-locked states ?

Answer : The term used is 'transit states'. Transit states should not levy customs duties, taxes or other charges for and used by land-locked states except charges levied for specific services rendered in connection with such traffic.

iii) Give names of Conventions which provide for use of sea to the Land-locked states.

Answer : Convention on transit trade of land-locked states of 1965 – Convention on the law of sea of 1982.

Q. 4 : Answer Any Four : = 48.

- a) Define Human Rights. Explain the role of the Supreme Court in upliftment of the rights of people.
- b) What is a treaty ? Discuss the significance of a treaty in International Scenario.
- c) "Right to clean and healthy environment is a fundamental right". Explain with the help of case laws.
- d) What is Recognition ? Write the types of recognition. Discuss with help of examples.
- e) What is law of sea ? State and explain the importance of law of sea in today's political scenario.
- f) Discuss the sources of International Law.

[17]

[April, 2013 (17.04.13)]

With Solutions

Q. 1 : Answer the following in One or Two sentences : = 20.

- a) Define Constitutive Theory of Recognition of state.

Answer : According to the constitutive theory of recognition, personality of a state is created not by fact, but through recognition by other states.

b) Give any two rights that are not available to Aliens in India.

Answer : Rights not available to aliens – I) Special civil and political rights are denied to them i.e. right to vote, right to engage in political activities. II) Right to join in civil services and certain professions, such as, chief officer or chief engineer of merchant ship.

c) What do you understand by Bilateral Treaty ?

Answer : Treaties entered into by only two parties, are called Bilateral Treaty.

d) In which year, the International Covenant on Civil and Political Rights, was adopted, and when it came into force ?

Answer : Adopted on 19th December, 1966, and came into force on 23rd March, 1976.

e) Define 'child' as defined under the Convention on Rights of the Child, 1989 ?

Answer : Article 1 – "a child means, every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

f) What do you understand by the term 'double jeopardy' ?

Answer : "No prosecuted and punished for the same offence more than once".

g) In India, the National Commission for Women is established under which statute ?

Answer : National Commission for Women Act, 1992.

h) What is Article 32 of the Constitution of India ?

Answer : Article 32 of the Constitution of India provides for remedies for enforcement of rights conferred by Part III of the Constitution of India.

i) Where is the permanent headquarter of UNESCO ?

Answer : The permanent headquarter of UNESCO is at Paris (France).

j) Write two objects of the National Commission for Women.

Answer : i) For better implementation of Constitutional provisions given in Articles 14, 15, 15 (3), 39; ii) For remedying the existing situation of women so to improve the conditions of women – the Parliament enacted the "National Commission Women Act, 1999" to constitute a National Commission for Women.

Q. 2 : Write short notes on Any Four of the following : = 20.

a) Sovereign Equality of states.

Answer :

Article 2, para 1 of the UN Charter mentions about 'Sovereign equality of all its members' which means, all the countries of the world have equal status irrespective of their size and resources.

b) European Court on Human Rights.

Answer :

European Convention on Human Rights establishes European Court of Human Rights by protocol No. 11. [Students have to discuss the composition and jurisdiction of the Court].

c) Briefly explain any two sources of Public International Law.

Answer :

Article 38 of the statute of the International Court of Justice provides conventions, customs, general principles of law, judicial decisions and teachings of highly qualified publicists. [Students may explain any of the above two sources].

d) Role of NGO's in India.

Answer :

Role of NGO :

- 1) May represent the victim.
- 2) Establish infrastructure for needy.
- 3) Bridging gap between the Government and citizen.
- 4) Spreading awareness about rights of citizen.
- 5) Call for special studies and investigation.
- 6) Research, etc.

e) Any five rights of Prisoners in India.

Answer :

Rights of the Prisoners :

- 1) Right not to be handcuffed or feet cuffed.
- 2) Humane conditions of living inside the prison.
- 3) Separate cell for male and female prisoners.
- 4) Right to meet family and friends.
- 5) Right not to be tortured, Medical examination, etc.

[Students answer would have brief explanation of the above five rights].

f) Explain the four mandates of the state.

Answer :

Four mandates of the state are --

- 1) Territory.
- 2) Population.
- 3) Government.
- 4) Capacity to interact with other states

Q. 3 : Solve Any Two of the following cases :

= 12.

a) Ram and Lakshman are two brothers from a place called Sitapur. They are below the age of 12 years. Their parents are very poor and can't meet their basic needs. Both the brothers were sold to a man from town for Rs. 20,000/-, each. The man in turn, sold them to a wealthy industrialist for Rs. 50,000/-, each. This industrialist employed them in his fire bricks industry.

i) What is the nature of crime committed in the above case, Trafficking or child labour ? Give reasons to your answer .

Answer : Both the crimes have been committed. Trafficking mean, buying and selling of human being. Both the brothers have been sold and bought by various hands. Child labour is employment of child below the age of 14 years in any hazardous work. Here, children are below the age of 12 years, and fire bricks industry is hazardous for their health.

ii) Do children have Human Rights ? Define Human Rights.

Answer : Yes, human rights are those rights which are inherited at the time of birth by virtue of being born as human being.

- b) In 1971, in the hills of Uttaranchal, a plot of forest land was allotted to a sports company. Local villagers were denied permission to use timber to make agricultural tools. Women, being most affected by the hardships of both the ongoing devastation of their environment and their privatization of basic resources, played a prominent and decisive role. This is often described as a "Women's Movement" to protect the forest ecology of the Uttarakhand.

i) Give name of the movement.

Answer : Chipko Movement.

ii) Give names of two similar cases.

Answer : Women force started embracing and hugging the trees to prevent them from being axed.

- c) The French mail steamer collided on High Seas with Turkish ship. It was alleged that the collision was due to the gross negligence of the officer of the watch on board, the Lotus. The result was that, the Turkish boat sank, and eight Turkish national on board, died.

i) The above facts are based on which international case ?

Answer : Lotus Case.

ii) What was held in that case ?

Answer : Turkish authorities have the jurisdiction of instituting proceedings by objective territorial principle.

Q. 4 : Answer Any Four of the following questions in detail : = 48.

- a) Define Public International Law. Why Austin considers Public International Law, a weak law ?

Answer :

"International Law is the body of rules which is legally binding on states in their intercourse with each other. These rules are primarily those which govern the relations of states, but states are not the only subjects of International Law. International organizations and to some extent, also individuals may be subjects of rights conferred and duties imposed by International Law" - Oppenheim.

Austin's argument is based on following points [students are expected to elaborate on these points] :

- 1) No sovereign authority, it being customary law.
- 2) No adequate sanction behind it.

- b) Discuss with case laws Fundamental Rights of women under the Constitution of India.

Answer :

Article 14, 15, 15 (3), 16, 21, 23 of the Constitution of India must have been discussed. Cases like Nargesh Mirza, C.B.Muthamma, Githa Hariharan, Vishakha are the common cases. Other cases which are relevant, may be discussed.

- c) Discuss Universal Declaration of Human Rights, 1948.

Answer :

UDHR discusses civil and political rights under Article 2-21 and economic and social rights under 22-27. UDHR is not binding on State Parties.

- d) What do you understand by Judicial Activism ? Explain the role of Courts in enforcing Human Rights.

Answer :

Students are expected to write how judiciary has evolved over a period of time - from positivist to more liberal and flexible. Gopalan's case to Maneka Gandhi's case and Bandhua Mukti Morcha, Rudal Shah, Hussainara Khatoon, etc.

- e) Discuss territorial water of a coastal state under the UNCLOS. What are the rights and duties of coastal state on territorial sea ?

Answer :

Territorial sea is that part of the sea which is adjacent to the course and over which international law permits the coastal states to exercise sovereignty, subject only to a general right of innocent passage on the part of the foreign shipping. Article 3 of the Convention of 1982 provides that, every state has the right to establish the breadth of its territorial sea upto a limit not exceeding twelve Nautical Miles measured from the appropriate baseline.

Rights of coastal states :

They have complete dominion over this part of the sea except of the right of innocent passage and of transit by vessels of all nations.

Rights of other states :

Vessels of all the states have a right of innocent passage and navigation through territorial sea of the state.

- f) Explain –

i) Amnesty International.

ii) UNICEF.

Answer : Students have to write about origin and functions of the above two organizations.

[18]

[November, 2013 (29.11.13)]

With Solutions

Q. 1 : Answer in Two to Three sentences (2 marks each) : = 20.

- a) Define International Law.

Answer : International Law may be defined as – “that body of law which is composed for its greater part of the principles and rules of conduct which states feel themselves bound to observe”.

- b) Give two objectives of WHO.

Answer : i) Maintain disease free world; ii) Maintain standard of drugs and medicine; ii) Fight against dreaded diseases,; etc.

- c) What do you mean by non-intervention ?

Answer : Every state has a right to manage its affairs according to its own wishes. This right has been granted on the basis of state sovereignty. No state has right to interfere in the affairs of other state, this is known as non-intervention.

- d) What are the attributes of a state ?

Answer : i) Territory; ii) Population; iii) Government; iv) Capacity to interact with other states.

- e) What is *jus-cogens* ?

Answer : A treaty can be declared void in International Law, if it conflicts with a peremptory norm and such treaty shall be considered as void ab initio. This is called jus cogens.

f) What do you mean by Agenda 21 ?

Answer : It is the most exclusive document of the Rio Summit. This Commission was set up on 16th February, 1993. It was set up on the principle of "equitable geographical distribution" to ensure a balance between the developed and the developing world.

g) What is *Pacta Sunt Servanda* ?

Answer : Every treaty in force is binding upon the parties to it, and must be performed by them in good faith. Agreements between the nations must be respected by them.

h) What is asylum ?

Answer : Asylum is a place where refugees are given shelter. In case of Asylum, individual is the subject of International Law.

i) State any two rights of aliens.

Answer : i) Right to personal liberty; ii) Right to personal security; iii) Right to property; iv) Right under a contract, whether limited by any clause or not. [state any two]. Or i) They possess all those procedural rights which are available to the citizens in a state; ii) They also possess substantive rights, which are the rights of the citizens of the country.

j) What is right to development ?

Answer : The term 'development' encompasses the development of economic, social, cultural and political process for the development of the personality of human beings.

Q. 2 : Write short notes (Any Four) :

= 20.

- a) American Convention.
- b) Right to Healthy Environment.
- c) Convention on Rights of Children, 1989.
- d) International Labour Organization.
- e) UNESCO.
- f) Universal Declaration of Human Rights.

Q. 3 : Solve Any Two :

= 12.

a) In a central jail in India, one of the prisoners wrote letter to Hon'ble Supreme Court about the inhuman conditions of living for the prisoners inside the jail.

i) Write any two rights of prisoners.

Answer : i) Right to speedy trial; ii) Right to provide legal assistance. iii) Right to be informed about grounds of arrest on being arrested; iv) Right to be treated with humanity; etc. (any two).

ii) Write any two landmark cases on the rights of prisoners.

Answer : i) Sunil Batra v/s. Delhi Administration, (1978) 4 SCC 494, 596 (FB); ii) Sheela Barse v/s. State of Maharashtra, (1983) 2 SCC, 99, 99, 100, AIR 1983 SC 378.

b) A woman was appointed as a secretary to the Chairman of a company. The Chairman made remarks on her dressing. While on a business meeting, he also tried to misbehave with this lady employee.

i) What is sexual harassment ?

Answer : Sexual harassment includes i) Physical contact and advances; b) A demand or request of sexual favours; c) Sexual coloured remarks; d) Showing pornography; and e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

ii) Write important provisions relating to sexual harassment at workplace.

Answer : a) Appropriate working conditions for health, work, leisure, hygiene; b) Upon complaint, onus on employer to make appropriate investigations; c) Complaint mechanism in each department, etc.

- c) As a result of a clashes between East Pakistan and West Pakistan, a new state by the name of Bangladesh emerged. India became the first state to recognise Bangladesh.

i) What is recognition ?

Answer : When a State is acknowledged by other existing States, it is known as 'recognition' of State. For the purposes of recognition of a state, it should possess essential attributes of state-hood, such as requisite population, territory, a Government and the capacity to enter into economical, political, etc. relations with other states; Such a state is acknowledged/recognised by other existing states, as a state. It is known as 'recognition'.

ii) What are the various modes of recognition ?

Answer : a) Defacto recognition; b) De Jure recognition.

iii) What is the effect of recognition ?

Answer : It amounts to a formal acknowledgement by the existing members states of international community of the international personality of that new state/recognised state.

Q. 4 : Answer Any Four :

= 48.

- Peaceful Settlement of disputes.
- Define treaty. Explain the significance of treaty in governing the relations between the states.
- What is a land-locked state ? Discuss the rights and duties of land-locked state and coastal state.
- Write the role played by International Court of Justice in world peace. Give suitable examples.
- Discuss the important contributions made by judiciary in upliftment of human rights in India. Give case laws.
- State the important provisions laid down in the Constitution of India for enhancing the position of women in India. Explain with the help of landmark Supreme Court judgements.

[19]

[April, 2014 (25.04.14)]

With Solutions

Q. 1 : Answer in One/Two sentences :

= 20.

- a) What is the main objective of the International Court of Justice ?

Answer : The main objective of the International Court of Justice is to give an advisory opinion on any legal question on the request made by the General Assembly or the Security Council.

b) What is *Pacta Sunt Servanda* ?

Answer : Every treaty in force is binding upon the parties to it, and must be performed by them in good faith. Or Agreements between the nations must be respected by them.

c) What is UNESCO ?

Answer : It means, the United Nations Educational, Scientific and Cultural Organization.

d) What do you understand by the term Arbitration ?

Answer : A procedure for the settlement of dispute between states by a binding award on the basis of law and as a result of an undertaking voluntarily accepted.

e) What is a land-locked state ?

Answer : A state, whose boundaries are entirely surrounded by land is called "land-locked state". Convention on the Law of Sea, 1982, Article 124 (1) (a) states : "a state which has no sea-coast or sea boundary.

f) What is Holy Sea ?

Answer : High Sea – Parts of the sea which are not included in the territorial waters. [See Geneva Convention on High Sea, 1958, Article. 1]. Holy see is a small sovereign state. It has a half square kilometre of land territory. The population of Holy sea is about 1,000/- persons. Bishop of Rome which is commonly called as Pope, is known as Holy sea.

g) What is amnesty international ?

Answer : Amnesty International is an international N.G.O. that protects/promotes human rights all over the world. Peter Benenson, a London based lawyer who organised a letter writing campaign calling for amnesty for "prisoners of conscience", founded it in 1961.

h) What is innocent passage ?

Answer : It is the right of foreign merchant vessels to have innocent passage through the territorial waters of the state.

i) Write two important provisions of the Indian Constitution on Rights of Children.

Answer : i) Article 21-A – Right to education "The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine"; ii) Article 24 – Prohibition of employment of children in factories, etc. "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

j) Give any two legislations relating to protection of environment in India.

Answer : 1) Environmental Protection Act, 1986; 2) Wild Life Protection Act, 1972.

= 20.

Q. 2 : Short Notes (Any Four) :

- a) Plurilateral Treaties.
- b) International Bill of Rights.
- c) European Convention.
- d) Rights of Workers.
- e) Mediation.
- f) Convention on the Law of the Sea.

Q. 3 : Situational questions (Any Two) : = 12.

- a) Air India Authority made regulations and prescribed for different retirement age and rules of service for male and female attendants. The petitioner Air Hostess was terminated from her job on the ground of her first pregnancy. The petitioner challenged this rule.

i) Are human rights violated in the above case ? Give reasons with the help of case law.

Answer : Yes. It is a human rights violation. Article 21 has been violated.

ii) Explain the provisions of Article 14 and Article 15 as laid down in the Constitution of India.

Answer : This problem is based on Rudal Shah's case; Air India v/s. Nargesh Mirza. See Article 14 – Equality before law. Article 15 – No person shall be discriminated only on the ground of caste, creed, religion, place of birth and sex. (the Constitution of India).

- b) Mr. Aranjho was national of the State of Synthia. The Civil War in the Synthia forced people to move to some other country. Mr. Aranjho along with his family moved to a neighbouring country Burgus. Burgus allowed the people from Synthia to stay, but declined to give them citizenship.

i) Define Nationality.

Answer : Nationality is a status of a natural person who is attached in a state other than of which he is a National.

ii) Who are aliens ? What are the rights of aliens ?

Answer : When a person who possesses the nationality of one state, is present in another state, then such person is legally termed as alien. Aliens mean those persons who live in that state, of which they do not possess citizenship or nationality.

Rights of aliens : i) Right to personal security; ii) Right to personal liberty; iii) Right to property; iv) Right under a contract, whether limited by any clause or not.

- c) A man was detained in the local police station by the police. Later on his body was found lying on the railway tracks. The police claim that he committed suicide, but post-mortem report revealed that he died of internal injuries that may have caused due to excessive beatings.

i) Which Convention aims at safeguarding the rights of prisoners? Give two case laws.

Answer : A Convention on Human Rights – Human Rights Act, 1993. The landmark cases are – i) Sunil Batra v/s. Delhi Administration (1978, 4 SCC, 494, 596 (FB); ii) Sheela Barse v/s. State of Maharashtra, (1983) 2 SCC, 96, 99, 100.

ii) What are the guidelines given by the Supreme Court in cases of custodial violence and custodial deaths ? Write the views of the Supreme Court about compensation in the above situations.

Answer : The Supreme Court has pointed out that legal assistance to the poor or indigent accused who is arrested and put in jeopardy of his life and personal liberty is a Constitutional mandate not only by Article 39-A but also by Article 14 and 15 of the Constitution of India. Thus the right against custodial violence has also been carved out as a fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

Q. 4 : Long answers (Any Four) : = 48.

- What are the various stages of a treaty ?
- Role of National Commission for Women in the upliftment of women in India.
- Discuss the importance of various environment related Conventions in improvement of global environmental conditions.
- Explain : International Labour Organization – Composition, Role and Function.
- Discuss individual as a subject of International Law.
- Role of NGO's in improvement of conditions of Children. Elaborate with the help of case laws.

[20]

[December, 2014 (08.12.14)]

With Solutions

N. B. : (1) All questions are compulsory.
(2) Figures to the right indicate full marks.

Q. 1 : Answer in not more than Two sentences : = 20.

a) Give two Theories of Recognition of States.

Answer : i) Constitutive Theory; and ii) Declaratory Theory.

b) What is UNCLOS ?

Answer : It means United Nations Convention on the Law of the Sea. Article 3 of the Convention of 1982 provides that, every state has the right to establish the breadth of its territorial sea upto a limit not exceeding 12 nautical miles measured from the appropriate baseline.

c) What is 'Pacta Sunt Servanda' ?

Answer : Every treaty in force is binding upon the parties to it, and must be performed by them, in good faith".

d) What was the main object of Stockholm Conference, 1972 ?

Answer : The main object of Stockholm Conference, 1972 was to solve the global problem of protection and improvement of the human environment by international conference on universal level.

e) What are 'Land Locked' States ?

Answer : The states which have no sea-coast.

f) Give names of Nobel Peace prize winners for the year 2014.

Answer : 1) Malala Usuf Zai; 2) Kailash Satyarthi.

g) Give any two International Regional Treaties concerning protection of human rights.

Answer : 1) Convention Against Torture and other inhuman or degrading treatment or punishment [CAT]; 2) International Convention on the Elimination of All Forms of Racial Discrimination [CEDAW].

h) What is 'State Territory' ?

Answer : A state territory is a territory over which a state has an overall control. A state territory is not confined only to land under its supremacy, but it is more than that – it is comprised of a) land territory; b) National waters; c) territorial sea; d) air space above the territory; e) sub-soil under earth.

i) What is 'Right to Development' ?

Answer : The Declaration on the Right to Development was adopted by the General Assembly Resolution of 4th December, 1986, which proclaims this right as an inalienable human right and every

human being is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised.

j) Give any four personal freedoms guaranteed under Article 19 of the Constitution of India.

Answer : a) right to freedom of speech and expression; b) right to assemble peaceably and without arms; c) right to form associations or unions or co-op societies; d) right to move freely throughout the territory of India; e) right to reside and settle in any part of the territory of India, etc.

Q. 2 : Write notes on Any Four out of Six topics : = 20.

- a) Principle of Jus Cogens.
- b) Customs as source of International Law.
- c) Rights of Prisoners in India.
- d) International Court of Justice.
- e) Principle of Non-Intervention.
- f) Judicial Activism in Environmental law.

Q. 3 : Solve Any Two : = 12.

a) In a remote District in the State of Battisgarh, a group of twenty five women were forced by local District administration to undergo sterilisation. Due to medical negligence, fifteen women lost their lives. A local NGO wants to file PIL.

i) According to you what fundamental rights have been violated in this case ?

Answer : The fundamental right to protection of life and personal liberty which is guaranteed under Article 21 of the Constitution of India, have been violated in this case.

ii) Under which Constitutional provisions can the NGO file PIL ?

Answer : Public Interest Litigation can be filed under Article 226 or Article 32 in the High Court of Battisgarh, or the Supreme Court of India, respectively.

iii) Can the Court award compensation to the families of deceased women in PIL ?

Answer : Yes, the court can award compensation in such PIL to the families of the deceased women.

b) The State of Uraq annexes the neighbouring State of Suwait. The UN Security Council passed resolution directing the State of Uraq to withdraw its forces from the State of Suwait. When the State of Uraq refused to comply with the resolution, the UN Security Council passed further resolution calling upon all the member States to provide support to military action against the State of Uraq.

i) Are the UN Security Council resolutions passed under the UN charter binding on the States ?

Answer : Yes, the resolutions passed under the UN Charter, are binding on the states.

ii) Does the United Nations Security Council have power to take military action against the states which do not comply with its resolutions ?

Answer : Yes, the UN Security Council has power to take military action against the states which do not comply with its resolution.

iii) Write a historical precedent governing the situation.

Answer : The Resolution 687 (1991) of April 3, 1991 Gulf War II (2003) – It was held that – “If the principle of non-use of force is violated unjustifiably by the states, then maintenance of peace and security will remain at stake, and the existence of the United Nations will become questionable”.

c) In the District of O.P. in India, many cases of communal violence have taken place in the last four months in which instances of atrocities against members of minority community have been

reported. Mr. X is one such victim from minority community. He has demanded inquiry into these cases.

i) Which Commission can take cognizance of Mr. X's complaint ?

Answer : The National Commission for Minorities.

ii) What are powers concerning inquiry of Commission ?

Answer : The powers are – i) Discrimination in employment and occupation; ii) Discrimination in matters of religious rights and practices and in the matter of political rights; iii) Discrimination in respect of everyone to leave any country, including his own or return to his country; iv) Discrimination against

iii) Write Constitutional provisions for protection of minorities.

Answer : To safeguard the interest of minorities and for their protection under the Constitution of India, the provisions under Article 14 – : Equality before the law –; Article 15 : Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth; – Article 29 : Protection of interests of minorities have been made.

Q. 4 : Write Any Four out of Six : = 48.

- a) What is International Law ? What are its salient features ? Is International Law, a true law ?
- b) Explain evolution of International Human Rights Law and the role of UN in that process.
- c) What is treaty ? What are various stages of Treaty making ? Explain the term 'reservation' in Treaties.
- d) What is the status of Human Rights of children in India ? Explain with reference to CRC provisions, Constitutional provisions and important case law.
- e) Do you think India should abolish capital punishment ? Justify your opinion with the help of Constitutional provisions; International Conventions and Protocols and Case Law.
- f) Explain the principle of freedom of high seas. What are the exceptions to this principle ?

[21]

[April, 2015 (21.04.15)]

With Solutions

N. B. : (1) All questions are compulsory.

(2) Figures to the right indicate full marks.

Q. 1 : Answer in not more than Two sentences : = 20.

a) What is territorial sea ?

Answer : The Coastal states area having sovereignty over the territorial sea. Territorial sea are extended upto 12 nautical miles measured from the appropriate base lines. Coastal states have complete sovereignty over this area.

b) International custom.

Answer : When a general practice is followed consistently for a long period by most members of states of international community which acquires a range of legal obligation, it gives rise to customary international law. Such custom is known as international custom and is binding on the states.

c) Principle of Jus Cogens.

Answer : The principle of Jus Cogens means rights and obligations arising from the treaty, are binding only on the parties to a treaty and not on a third state without its consent.

d) What do you understand by the term Convention ?

Answer : Convention means an agreement or compact, especially among nations; a multilateral treaty, e.g. Geneva Convention, etc.

e) What is Rebus Sic Stantibus ?

Answer : Rebus sic stantibus means the States are bound to fulfil in good faith, the obligations assumed by them under treaties.

f) What is UNDP and UNEP ?

Answer : UNDP means – United Nations Development Programme; UNEP means – United Nations Environmental Programme.

g) Write any two qualifications of the Chairperson of the National Human Rights Commission.

Answer : 1) Must not be more than 70 years of age; 2) Must be the former Chief Justice of India.

h) What do you mean by ozone depletion ?

Answer : Ozone Depletion means “Destruction of the upper atmospheric layer of ozone gas caused by substances formed from breakdown of ozone depleting substance”.

i) What is ‘right to education’ guaranteed under Article 21A of the Constitution of India ?

Answer : The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State, may, by law, determine.

j) Two rights concerning family guaranteed under ICCPR.

Answer : 1) To preserve the human dignity; 2) To provide various civil and political rights; 3) To provide for legally binding Convention. [These are rights guaranteed under the International Convention on Civil and Political Rights].

Q. 2 : Write notes on Any Four :**= 20.**

- a) Hot pursuit.
- b) Difference between contractual treaties and law-making treaties.
- c) International Labour Organization.
- d) European Convention on Human Rights.
- e) National Commission for Scheduled Castes.
- f) Judicial Decisions on right to privacy.

Q. 3 : Situational questions (Any Two) :**= 12.**

- a) In the State of Unisia, a group of terrorists attacked a museum and held 250 people hostage. Most hostages were foreign tourists and about 100 people belonged to the State of V. S. The siege continued for two days but Unisian authorities failed to rescue the hostages. The terrorists threatened to kill all the hostages belonging to the State of V. S., unless the State of V. S. met their certain demands. In a covert military operation, the special forces of the State of V. S. killed the terrorists and rescued most hostages. The State of Unisia cried foul and claimed that conducting such military operation in its territory without its permission was

violation of its territorial integrity and claimed compensation from the State of V. S. for illegal intervention.

i) What is State territory ?

Answer : The state territory is established within a definite area of the globe delimited/demarked formally by agreed boundaries between the surrounding states. International law gives recognition to the territorial sovereignty exercised by the state in question within that area. The state has a exclusive control and jurisdiction over such territory within its dominion.

ii) What is international principle of non-intervention ?

Answer : U.N. Charter explicitly prohibits intervention on the part of individual states when it ordains the member states to refrain in the international relations from the threat or use of force against the territorial integrity or political interference of any state.

b) Shriya Chellai is an environment activist and national of the State of Scindia. Her organisation has conducted an environment audit of ecologically sensitive areas in the State of Scindia. The audit report is extremely critical of the Government of Scindia's policies on environment. Shriya has been invited to submit her report at a prestigious international conference on environment to be held in the State of Ukay. The Scindia Government apprehends that submission of report at the conference shall damage the prospects of international investments in the country. Therefore, the Scindia Government issues a look-out circular against Shriya Chellai to prevent her from travelling abroad. Shriya has challenged this action by the Scindia Government in the court of law by contending that it amounted to violation of her fundamental rights. Scindia's Constitution is identical to the Indian Constitution.

i) Discuss right to freedom of movement guaranteed under the Constitution of India with special reference to the provisions of ICCPR.

Answer : The right of freedom of movement is the fundamental right provided under Article 19 (d) of the Constitution of India – "to move freely throughout the territory of India". Article 19 (5) lays down certain restrictions on this right. It lays down that – "Nothing in sub-clause (d) and (e) of Article 19 i.e. right to move freely right to reside and settle in any part of the territory of India shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sun-clauses either in the interests of the general public or for the protection of the interests of any Scheduled tribe.

ii) According to you, have the fundamental rights of Shriya Chellai been violated in this case ? If yes, what rights ? Discuss with reference to recent Delhi High Court Judgement.

Answer : Yes, the fundamental rights of Shriya Chellai have been violated in this case. The right to move freely throughout the territory of India (freedom of movement) guaranteed under Article 19 (d).

c) In the District of O.P. in India, many cases of communal violence have taken place in the last four months in which instances of atrocities against members of minority community have been reported. Mr. X is one such victim from minority community. He has demanded inquiry into these cases.

i) Which Commission can take cognizance of Mr. X's complaint ?

Answer : The national Commission for Minorities can take cognizance of Mr. X's complaint.

ii) What are the powers concerning inquiry of such Commission ?

Answer : The powers of the Commission concerning inquiry are – 1) Discrimination in employment and occupation; 2) Discrimination in the matter of religious rights and practices and in the matter of political rights; 3) Discrimination in respect of everyone to leave any country, including his own or return to his country; 4) Discrimination against persons born out of wedlock; 5) Equality in the administration of justice; 6) Racial discrimination in the political, economic, social and cultural spheres.

Q. 4 : Answer Any Four : **= 48.**

- 1) What is international law ? Compare International law with Municipal law and discuss if International law is a true law.
- 2) Individuals are subjects of International law. Discuss its scope and limitation with reference to provisions of UN Charter concerning rights of individuals.
- 3) Discuss the rights of children in India by referring to CRC provisions, Constitutional provisions and important case law.
- 4) What is Recognition ? Give the various theories of Recognition of states in International law.
- 5) Discuss development of law concerning prevention of sexual harassment at workplace in India with reference to Vishakha case and subsequent legislation on this subject.
- 6) Discuss various measures of Peaceful Settlement of International Disputes.

[22]

[December, 2015 (01.12.15)]

With Solutions

- N. B. :** (1) All questions are compulsory.
(2) Figures to the right indicate full marks.

Q. 1 : Answer in not more than Two sentences : **= 20.**

- (a) Define International Law.

Answer : International Law regulates the relations of States with one another. Oppenheim's definition – "The law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other".

- (b) What are the two important features of UNESCO ?

Answer : 1) To contribute peace and security by promoting collaboration among the nations through education, science and culture; 2) Farther universal respect for justice, rule of law, human rights and fundamental freedoms for all. [Constitution of UNESCO].

- (c) Give two directive principles safeguarding the rights of workers.

Answer : 1) Living wages for workers, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities; and 2) State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas – [Article 43 Of the Constitution of India].

- (d) What is continental shelf ?

Answer : The continental shelf is the sea-bed and sub-soil of the submarine areas adjacent to the coast, but outside the area of territorial sea, to a depth of 200 meters or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas.

- (e) What is recognition of states ?

Answer : As defined by Fenwick, recognition of a state means, formal acknowledgement by the existing members of an international community of the international personality of a State or political group, not hitherto maintaining official relations with it.

(f) What is EEZ ?

Answer : It is an Exclusive Economic Zone consisting of an area beyond and adjacent to the territorial sea extending upto 200 nautical miles towards the sea from the coast baseline from which the breadth of the territorial sea is measured.

(g) What do you understand by the term VETO POWER of the permanent members of the security council ?

Answer : The decisions on non-procedural matters shall be taken on a vote of nine members of the Security Council including the concurring votes of the permanent members. If the concurring vote/votes are withheld by any permanent member/members the proposal shall be deemed vetoed i.e. it could not be validly adopted.

(h) Write any two functions of National Commission for Children.

Answer : 1) Right to acquire Nationality; 2) Right to education; 3) Right to standard of living, etc.

(i) What is Mediation ?

Answer : Mediation, as used in law, is a form of alternative dispute resolution (ADR), is a way of resolving disputes between two or more parties. A third party, the mediator, assists the parties to negotiate their own settlement (facilitative mediation). In some cases, mediators may express a view on what might be a fair or reasonable settlement, generally where all the parties agree that the mediator may do so (evaluative mediation).

(j) What is JUS COGENS ?

Answer : A treaty can be declared void in International Law, if it conflicts with a peremptory norm and such treaty shall be considered as void ab initio. This is called jus cogens.

Q. 2 : Write short notes on Any Four :

= 20.

- (a) Custom as a source of International Law.
- (b) UNICEF.
- (c) International Labour Organization.
- (d) Role of NGOs in the protection of Human rights.
- (e) National Commission for Minorities.
- (f) American Convention on Human Rights.

Q. 3 : Situational questions (Any Two) :

= 12.

(a) Children below the age of 14 years should be given free and compulsory education as per the amendment in the Constitution. The Supreme Court has been instrumental in bringing the welcome change by way of its enthusiastic judgments.

(i) Which convention deals with the issues related to children ?

Answer : International Convention on Rights of a Child.

(ii) Write a note on the rights of Children with the help of case laws.

Answer : The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State, may, by law, determine.
Protection from sexual exploitation and hard labour – People's Union for Democratic Rights v/s. Union of India [AIR 1983 SC p. 1473] – prohibition on child labour

(b) In a Supreme Court Judgment the court reinforced the argument that all the three organs of Government : legislature, executive and judiciary must act according to constitutional mandate of equality between men and women.

- (i) Give any two landmark judgments of Supreme Court reinforcing right to equality for women.

Answer : 1) Vishakha v/s. State of Rajasthan; 2) Nargesh Mirza v/s. Air India.

- (ii) Explain how the legislature has actively incorporated the above observation of the Supreme Court. Give the names of few Acts on the rights of women.

Answer : The observation given above, is actively incorporated by our legislature by enacting – 1) Welfare and Safety of Women in Factories Act, 1948; 2) Employment of women in mines as per the Mines Act, 1952; 3) Maternity Benefits Act, 1961; 4) Employment of women as per the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, etc.

- (c) A mail steamer collided on high seas with another ship. There were allegations that the collision was caused due to negligence of the officer who was commanding the steamer. As a result of the collision the ship sank and some persons on board died.

- (i) Write the name of the famous case relating to similar circumstances. Which court gave the judgment ?

Answer : S. S. Lotus Case, (1927) PCIJ series A No. 10, the Permanent Court of International Justice.

- (ii) Explain the judgment in short in the above case.

Answer : It was held that France had failed to prove the existence of a customary rule, forbidding states from exercising jurisdiction in favour of the flag state. The collision occurred in high seas and so the flag state will have jurisdiction exclusively. High Sea – Parts of the sea which are not included in the territorial waters. [See Geneva Convention on High Sea, 1958, Article 1].

By prosecuting and convicting the French captain is not in violation of International Law.

Q. 4 : Answer Any Four :

= 48.

- (a) "Judiciary has always been active". Explain the concept of Judicial activism in implementation of International Conventions in India for safeguarding human rights of citizens with the help of landmark Supreme Court Judgments.
- (b) Peaceful settlements of disputes under International Law.
- (c) What is Recognition ? Give the various theories of recognition of states in International Law.
- (d) What do you understand by UNCLOS ? Elaborate with the help of examples.
- (e) Elaborate the rights of prisoners with the help of D.K. Basu and other Supreme Court Judgments.
- (f) Define Human Rights under the Protection of Human Rights Act, 1993. Explain the functions of NHRC.

[23]

[April, 2016 (22.04.16)]

With Solutions

N. B. : (1) All questions are compulsory.

(2) Figures to the right indicate full marks.

Q. 1 : Answer in not more than Two sentences :

= 20.

- (a) Define International Law.

Answer : International Law regulates the relations of States with one another. Oppenheim's definition – "The law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilised States in their intercourse with each other".

(b) What is non-use of force ?

Answer : It is one of the principal to settle the disputes between or among Nations. Para 3 of Article 2 of United Nations Charter = All members shall settle their international disputes by peaceful means.

(c) What is UNCLOS ?

Answer : United Nations Convention on Law of Sea.

(d) What is Rebus Sic Stantibus ?

Answer : The maxim rebus sic stantibus asserts that a treaty may be terminated if there occurs a fundamental change in the circumstances under which it was concluded.

(e) Give two differences between de-facto and de jure recognition.

Answer : 1) When an existing state considers that the new state has not acquired sufficient stability, it may grant recognition to the latter provisionally which is termed 'de facto recognition'; De jure recognition is final, complete and lawful, diplomatic representatives are exchanged. It may be given directly. 2) De facto recognition is always given to newly formed state at the initial stage, which can be revoked; It is recognition of a factual situation without conferring any legality on the new state or government; De jure recognition can be given to the existing state conferring a legality.

(f) Write two important features of Amnesty International.

Answer : It is a Non-Governmental Organization that promotes human rights. 1. Amnesty International draws attention to human rights abuses and campaigns for compliance with international standards. It works to mobilize public opinion in the belief that it is this which has power to exert pressure on those who perpetrate abuses. 2. The specific aims of Amnesty International are to – Abolish the death penalty; End extra-judicial executions and disappearances; Ensure prison conditions; Meet international human rights standards.

(g) What is 'Right to Development' ?

Answer : The Declaration on the Right to Development was adopted by the General Assembly Resolution of 4th December, 1986, which proclaims this right as an inalienable human right and every human being is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised.

(h) Explain the principle of "Equal Pay for Equal Work" enshrined in the Constitution of India.

Answer : Article 39 (d) : that there is equal pay for equal work for both, men and women.

(i) What Magna Carta ?

Answer : Magna Carta was granted by King John of England to the English barons in the year 1215 when they protested against the heavy taxes imposed by Richard I and they were unwilling to let King John rule again without concessions granted to them in taxes. Thus, Magna Carta was a protection given to the barons against arbitrary acts of the King.

(j) What is ICCPR and ICESCR ?

Answer : ICCPR – International Convention for Civil and Political Rights; ICESCR – International Convention for Economic, Social and Civil Rights.

Q. 2 : Write short notes on Any Four :**= 20.**

- (a) International Labour Organisation.
- (b) Custom as a source of International Law.
- (c) EEZ.
- (d) Individual as a Subject of International Law.
- (e) Right to education.
- (f) European Convention on Human Rights.

Q. 3 : Situational questions (Any Two) :**= 12.**

- (a) An inmate in police custody died. His family members alleged that the inmate died due to custodial torture. The authorities are denying any kind of torture or ill-treatment.
- (i) What are the rights of prisoners in India ?
Answer : i) Right to speedy trial; ii) Right to provide legal assistance. iii) Right to be informed about grounds of arrest on being arrested; iv) Right to be treated with humanity; etc.
 - (ii) Give any two landmark judgments on the rights of prisoners in India.
Answer : i) Sunil Batra v/s. Delhi Administration, (1978) 4 SCC 494, 596 (FB); ii) Sheela Barse v/s. State of Maharashtra, (1983) 2 SCC, 99, 99, 100, AIR 1983 SC 378.
 - (iii) Can compensation be claimed in the cases of custodial death ?
Answer : Yes, compensation can be claimed by the victim's family and the State is bound to provide a financial help to them.
- (b) A mall in Nairobi, the capital of Kenya, was attacked by terrorists and 200 people were held hostage. Many hostages were international tourists and 100 captives were national. The State of V.K. Kenyan Military failed to rescue the hostages. In a covert military operation, special forces of V.K. killed the terrorists and rescued the hostages. Kenya protested and claimed that it was violation of its territorial integrity.
- (i) What is State Territory ?
Answer : The state territory is established within a definite area of the globe delimited/demarked formally by agreed boundaries between the surrounding states. International law gives recognition to the territorial sovereignty exercised by the state in question within that area. The state has a exclusive control and jurisdiction over such territory within its dominion.
 - (ii) What is the international principle of non-intervention ? What are its exceptions ?
Answer : U.N. Charter explicitly prohibits intervention on the part of individual states when it ordains the member states to refrain in the international relations from the threat or use of force against the territorial integrity or political interference of any state. Exceptions are – 1. Protecting citizens abroad; 2. Self defence; 3. Self determination.
 - (iii) Did State of V.K. violated the principle of non-intervention ? Why ?
Answer : No, the state of V.K. did not violate the principle of non-intervention as it was an exception that the state must protect its citizens abroad where they are being wrongfully treated. Therefore, it justifies the intervention by the state V.K.
- (c) In the State of OP in India, communal riots took place last month. Many instances of atrocities against members of minority community were reported. Mr. Suraj Kumar is a social activist who has decided to work for securing justice to the riot victims. He has demanded inquiry into these cases.
- (i) Which National Commission can take cognizance of Mr. Suraj Kumar's complaint ?
Answer : The national Commission for Minorities can take cognizance of Mr. X's complaint.
 - (ii) What are powers concerning injury of such Commission ?

Answer : The powers of the Commission concerning inquiry are – 1) Discrimination in employment and occupation; 2) Discrimination in the matter of religious rights and practices and in the matter of political rights; 3) Discrimination in respect of everyone to leave any country, including his own or return to his country; 4) Discrimination against persons born out of wedlock; 5) Equality in the administration of justice; 6) Racial discrimination in the political, economic, social and cultural spheres.

(iii) Write constitutional provisions for protection of minorities.

Answer : Article 14 – Equality before law; Article 15 – Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth; Article 29 – Protection of interests of minorities, etc.

Q. 4 : Answer Any Four :

= 48.

- (a) What are the methods of peaceful settlement of disputes in International Law ?
- (b) Explain the principle of Sustainable Development and the Polluter Pays principle with the help of relevant International Declarations and case law.
- (c) "Special provisions for women in the Constitution of India aim at uplifting women to higher position in all the dimensions of life". Illustrate with the help of examples and landmark judgments.
- (d) What is treaty ? What are various stages of treaty making ? Explain the term 'reservation' in treaties.
- (e) Explain the principle of freedom of seas. What are the exceptions to this principle ?
- (f) Explain evolution of International Human Rights Law and the role of UN in that process.

[24]

[December, 2016 (03.12.16)]

With Solutions

- N. B. : (1) All questions are compulsory.
(2) Figures to the right indicate full marks.
(3) Support your answers with relevant case laws.

Q. 1 : Answer in not more than Two sentences :

= 20.

a) What is International Law ?

Answer : [December, 2016]

b) Name the four criteria of Statehood.

Answer : 1) People living in community; 2) There must be a 'geographical territory' where the people have settled down; 3) There must be an organization of representatives of the people and rule according to law of the land; 4) The state must be sovereign i.e independent and have the capacity to enter into relationship with other state.

c) What is constitutive theory of recognition of States ?

Answer : [April, 2013]

d) What is Pacta Sunta Servanda ?

Answer : [December, 2014]

e) What is Continental Shelf ?

Answer : [December, 2015]

f) What is Ozone Depletion ?

Answer : [April, 2015]

g) What is Asylum in International Law ?

Answer : [November, 2013]

h) Write two important functions of UNICEF.

Answer : [December, 2012]

i) Define Arbitration.

Answer : [April, 2014]

j) What do you understand by the term 'Right to Development ?

Answer : [December, 2014]

Q. 2 : Short notes (Any Four) :

= 20.

- a) Vienna Convention on Law of Theory.
- b) Peaceful Settlement of Disputes.
- c) Directive Principles and Human Rights.
- d) Rights of Children under the Indian Constitution.
- e) United Nations Environment Program.
- f) Amnesty International.

Q. 3 : Situational questions (Solve Any Two) :

= 12.

a) Mr. Santosh was a member of a Trade Union. Once while he was travelling he fell down from the running train. He was admitted to the Government hospital in a serious condition. As required, medical facilities were not available in the Government hospital, he was later on shifted to a private hospital. He claimed the sum of money from the Government which he spent on his treatment in the private hospital.

i) Can the claim be maintainable in Court in the above situation ? Why ?

Answer : Yes, the claim by Mr. Santosh is maintainable. Because it is the duty of the state to provide all and timely medical help, assistance and treatment to its citizens. Under Article 14 right to life and personal liberty of Mr. Santosh is violated.

ii) Give examples of two legislations based on International Conventions for improvement of workers condition.

Answer : 1) International Labour Organization : to enforce the guidelines given by International Labour Organisation for seeking social justice and internationally recognised human and labour rights; 2) Convention on the Protection of the Rights of Migrant Workers and members of their Family, 1990.

b) Bondona and Pacika are two neighbouring states having boundary disputes. To resolve their disputes, both the countries decide to approach the International Court of Justice.

i) State the procedure followed by the countries to approach the International Court of Justice.

Q. Answer : 1) Only states may apply to and appear before the Court. 2) The Court is competent to entertain a dispute only if the states concerned have accepted its jurisdiction in one or more of the following ways – a) by the conclusion between them to submit the dispute to the Court; b) by virtue of the jurisdictional clause; c) through the reciprocal effect whereby each state has accepted the jurisdiction of the Court; d) in cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides the issue; 3) The Court then decides in accordance with international treaties and conventions in force.

ii) Write the two famous cases decided by the International Court of Justice.

Answer : 1) S. S. Lotus Case; 2) Corfu Channel Case.

c) In a landmark Judgement, the Supreme Court held that the National Human Rights Commission shall act according to directions issued by the Supreme Court.

i) Discuss the functions of the National Human Rights Commission.

Answer : 1) to inquire *suo moto* or on petition of violation of Human Rights; 2) to visit the jails of State Governments to study the living conditions of the prisoners with a view to ensure protection of Human Rights; 3) to review the acts of terrorism that prevents the enjoyment of Human Rights; 4) to review the safeguards provided by the Constitution or any other law for the protection of Human Rights; 5) to recommend appropriate remedial measures for protection of Human Rights; etc.

ii) What shortcomings are there in the powers granted to the National Human Rights Commission as per the Protection of Human Rights Act, 1993 ?

Answer : 1) The order or decision given by the Human Rights Commission is not strictly enforceable by the Courts; 2) No punishment can be given by the Commission. Therefore the powers conferred on the Human Rights Commission become infructuous and guidelines given are not binding on the States.

Q. 4 : Discuss in detail (Any Four) :

= 48.

- Explain the term Sustainable Development. Explain various Acts which are enacted by the Central Government for the improvement of Environment.
- Explain the role played by the Supreme Court in India for the protection of human rights of people.
- What is UNCLOS ? Explain the importance of UNCLOS in resolving the disputes amongst disputing states.
- Define Human Rights. Trace the development of Human Rights regime in modern times.
- What is Recognition ? Explain the law relating to Recognition of States in International Law.
- Define Treaty. What are the various stages of formation of a treaty ? Give examples of two important treaties.

[25]

[April, 2017]

With Solutions

N. B. : (1) All questions are compulsory.

(2) Figures to the right indicate marks.

(3) Give reasons/case law wherever necessary.

Q.1 : Answer the following in not more than 2 sentences each : = 20.

a) Define treaty.

Answer : [May, 2012].

b) What is Monistic Theory ?

Answer : According to the Monistic Theory propounded by two German scholars Moster and Mortem, municipal law and international law are the parts of only one legal system. Therefore, international law cannot be distinguished from the municipal legal system. There is only one legal system and that is the domestic legal system.

c) What do you understand by the terms non-use of force ?

Answer : [April, 2016].

d) What is innocent passage ?

Answer : [November, 2010].

e) What is EEZ ?

Answer : [December, 2015].

f) Write two important functions of the National Human Rights Commission.

Answer : [December, 2012].

g) Write two issues of the Lotus Case.

Answer : 1) When the collusion occurs in the high seas, whether the flag state will have exclusive jurisdiction ? 2) Whether the customary rule exists in this case ?

h) What is Jus Cogens ?

Answer : [December, 2015].

i) Give two directive principles safeguarding the rights of women as laid down in the Constitution.

Answer : 1) that the citizens, men and women equally, have the right to an adequate means of livelihood; 2) that there shall be equal pay for equal work for both men and women. [Article 39].

j) What is UNCLOS ?

Answer : [December, 2014].

Q. 2 : Write short notes on Any Four of the following : = 20.

a) Mediation as method of settlement of International Dispute.

b) Corfu Channel Case.

c) CEDAW.

d) Rights of workers under the Indian Constitution.

e) American Convention.

f) UDHR.

Q. 3 : Solve Any Two of the following with reasons : = 12.

a) Sarita, a middle class girl from a village got married to Mahesh who was a class one officer in Maharashtra Public Service Commission. After her marriage she went to stay with her husband

in Mumbai. Mahesh did not take her to any of the social gatherings and told her that he feels ashamed of her. Gradually, he started abusing her verbally and physically.

i) Which rights of Sarita are violated in the above case ? Explain.

Answer : 1) Equality before law [Article 14]; 2) Prohibition of discrimination on the ground of sex [Article 15]; 3) Right to life and personal liberty [Article 21].

ii) Write any two legislations which aim at upliftment of rights of women passed by the Parliament.

Answer : 1) National Commission for Women Act, 1990; 2) The Protection of Human Rights Act, 1994; 3) Dowry Prohibition Act, 1961; 4) Suppression of Immoral Traffic Act, 1956.

b) In recent times there have been ceasefire violation along the India - Pakistan border on many occasions resettling into loss of life of army men and civilians.

i) What are the results of such ceasefire violations under the International Law ?

Answer : U.N. Charter explicitly prohibits intervention/interference on the part of individual states when it ordains the member states to refrain in the international relations from the threat or use of force against the territorial integrity or political interference of any state. Under Article 56 of the U.N. Charter, joint and separate action can be taken up by the state in co-operation with the U.N for promoting human rights.

ii) What are the rights of affected states in such situations ?

Answer : Right to political sovereignty of the state and human rights of the civilians are affected by violation of ceasefire.

c) The closure of many tea gardens in the State of Assam is resulting into loss of job to the daily wage workers who worked in these tea gardens. Many labourers and their family members are facing acute starvation many a times resulting into deaths.

i) Which rights of labourers are violated in the above case ?

Answer : Under Article 19 (1) (g) of the Constitution of India, the right of freedom of trade, occupation, profession or business; under Article 39 (a) right to adequate means of livelihood; and under Article 14 right to life and personal liberty of the labourers are violated.

ii) What are your suggestions to improve the condition of labourers in the above situation ?

Answer : 1) To enforce the guidelines given by International Labour Organisation for seeking social justice and internationally recognised human and labour rights; 2) To improve agriculture, forestry and fisheries and thereby provide good nutrition for all; 3) To eradicate poverty and hunger; etc.

Q. 4 : Discuss in detail [Any Four] :

= 48.

- Explain the term 'Sustainable Development'. Explain various Acts which are enacted by the Central Government for the improvement of Environment.
- Explain the role played by the Supreme Court in India for the protection of human rights of people.
- What is UNCLOS ? Explain the importance of UNCLOS in resolving the disputes among disputed states.
- Define Human Rights. Trace the development of Human Rights regime in modern times.
- What is Recognition ? Explain the Law relating to Recognition of states in International Law.
- Define Treaty. What are the various stages of formation of a treaty ? Give examples of two important treaties.

[26]

[January, 2018 (04.01.18)]

With Solutions

N.B. : 1. All questions are compulsory.

Q. 1 : Answer in One or Two sentences : = 20.

1) **Define International Law.**

Answer : International Law may be defined as that body of law which is composed for its greater of the principles and rules of conduct which states (i.e. countries) feel themselves bound to observe. Or "The law of nations or international law is the name for the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other" [Nov. 07; Nov. 08; Ap. 09; Apr. 10; Apr. 11; Dec. 12; Nov. 13; D. 15; Apr. 16; Dec. 16].

2) **Rebus sic stantibus.**

Answer : The maxim "Rebus Sic Stantibus" asserts that a treaty may be terminated if there occurs a fundamental change in the circumstances under which it was concluded". Rebus Sic Stantibus means the states are bound to fulfill in good faith, the obligations assumed by them under treaties. [Apr. 10; May, 12; Apr. 15; Apr. 16].

3) **What is non-use of force ?**

Answer : It is one of the principles to settle the disputes between or among Nations. Para 3 of Article 2 of the United Nations Charter states that – "All members (i.e member nations) shall settle their international disputes by peaceful means". [Apr. 16; Apr. 17].

4) **What is opinion juris ?**

Answer : "Opinio Juris" means an opinion in law or legal opinion regarding the custom. The legality of the existing custom has to be proved by the party who relies on Custom as a source of law.

5) **Write two important functions of National Commission for Women.**

Answer : The Commission shall – 1) investigate and examine all matters relating to the safeguards provided for women under the Constitution of India and all other laws; 2) present to the Central Government, annually and such other times as the Commission may deem fit, reports upon the working of those safeguards; 3) take up the cases of violations of the provisions of the Constitution and of other laws relating to women with the appropriate authorities. (State any two)[Apr. 13].

6) **What is stare decisis ?**

Answer : Stare decisis or a judicial precedent is the judgement or decision of the competent court of justice which is cited as an authority for the purpose of deciding a subsequent similar case in the same manner. A judicial precedent (stare decisis) is one of the important source of law.

7) Two objectives of WHO.

Answer : The objectives of WHO as envisaged in its Constitution is – “The attainment of the highest possible level of health of all people”. 1) It tries to promote health and to prevent the outbreak of disease; 2) It helps the member countries to improve and strengthen their health services. [Nov. 13].

8) What is magna carta ?

Answer : Magna Carta was granted by King John of England to the English barons in the year 1215 when they protested against the heavy taxes imposed by Richard I and they were unwilling to let King John rule again without concessions granted to them in taxes. Thus, magna Carta was a protection given to the barons against arbitrary acts of the King. [Apr. 16].

9) Write two issues of the Lotus case.

Answer : Issue No – 1) When the collusion occurs in the high seas, whether the flag state will have exclusive jurisdiction ? Issue No – 2) Whether the customary rule exists in this case ? [Dec. 15; Apr. 17].

10) Two rights of prisoners at the time of arrest.

Answer : 1) Right not to be hand-cuffed or feet-cuffed; 2) Right to be informed about the grounds of arrest on being arrested. [Apr. 13].

Q. 2 : Short notes [Any Four] :**= 20.**

- 1) KYOTO Protocol.
- 2) Rights of children under Convention on Right of Child.
- 3) National Human Rights Commission.
- 4) Corfu Channel case.
- 5) American Convention.
- 6) International Labour Organization.

Q. 3 : Answer Any Two :**= 12.**

- 1) The closure of many tea gardens in the State of Assam is resulting into loss of job for the daily wage workers who worked in these tea gardens. Many labourers and their family members are facing acute starvation, many a times resulting into deaths.
 - i) Which rights of labourers are violated in the above case ?
Answer : The right to adequate means of livelihood, better terms of employment and improving the living conditions by ensuring and protecting their employment and industries.
 - ii) What are your suggestions to improve the conditions of labourers ?
Answer : 1) To enact labour legislations on the conventions passed and recommendations made by the International Labour Organization (ILO); 2) Providing suitable hours of work, working conditions of women and young persons, minimum wages, employment policy, welfare facilities, voluntary conciliation and arbitration and examinations of their grievances, etc.
- 2) In recent times there have been ceasefire violations along the India – Pakistan border on many occasions resulting into loss of life of army men and civilians.
 - i) What are the results of such ceasefire violations under International Law ?
Answer : Due to ceasefire violation, there is a breach of international peace and harmony. Relations between these two nations are affected and as a result it also affects international relations between the friendly nations of these two nations. There are many casualties resulting in the loss of lives army men and innocent civilians residing on the border and affected area.

ii) What are the rights of affected States in such situations ?

Answer : Unlawful invasion on the territory of the affected State and violation of the human rights of the civilians in the area.

3) The 1972 Stockholm Conference had the effect of initiating worldwide participation and partnership in creating the awareness to preserve the environment from further damage.

i) State two major suggestions of the Stockholm Conference for improvement of Environment.

Answer : The Stockholm Conference on human environment held at Stockholm in June, 1972 contains 26 common principles of international policy for the improvement of the world environment. They are in the form of suggestions for all the nations in order to take proper steps for the improvement of environment – 1) Shaping action of people around the world for prudent care of the environment; 2) Industrialized nations (like America, Europe, etc) to reduce the gap between themselves and Developing countries (like Bangladesh, Shrilanka, etc.).

ii) Write any two provisions which were inserted in the Indian Constitution as an impact of Stockholm Conference.

Answer : By the Constitution (42nd Amendment) Act, 1976 – 1) Article 48-A : “he State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”; 2) Article 51-A (g) : “It shall be the duty of every citizen of India – to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”.

Q. 4 : Answer Any Four :

= 48.

- 1) What is treaty ? What is reservation in a treaty ? Write stages of a treaty.
- 2) Peaceful settlement of disputes.
- 3) Role of NGO in improvement of the conditions of women in India.
- 4) What are Human Rights ? Explain the role of United Nations in preservation of Human Rights.
- 5) What are the sources of International Law ?
- 6) Explain the concept of Right to healthy environment with the help of Supreme Court judgement.

[27]

[April, 2018]

With Solutions

Q. 1 : Answer the following in not more than Two sentences each :

= 20.

a) What is a treaty contract ?

Answer : Treaty contract means a written agreement by which two or more states or international organizations create or intend to create a relation between themselves, which operates within the sphere of international law. [Apr. 08; Apr. 11; May, 12].

b) Who according to the ICJ can interpret the provisions of the UN Charter ?

Answer : Being the principal judicial organ of the United Nations, the International Court of Justice (ICJ), can give an advisory opinion on any legal question to the General Assembly or the Secretary Council and also interpret the provisions of the UN Charter, whenever necessary.

c) Why was John Austin foremost critic of International Law ?

Answer : According to Austin, international law cannot be called as a true law, because, of the following reasons –

- a) International law is not enacted by a Sovereign legislative authority.
 - b) It does not have the sanction of any Sovereign legislative authority.
 - c) There is no agency for the enforcement of international law.
- Thus, according to Austin, international law is just a positive international morality. International law is, therefore, not a legal system.

OR

According to John Austin the Law laid down by the Sovereign authority must be supported by sanction. The sanction or punishment is mandatory, because, without such sanction, law will not be obeyed or followed by the people. Austin state that an International Law cannot be called a true law; International Law is no law, because of the following reasons – a) International law is not created by a Sovereign legislative authority; b) It does not have the sanction of any Sovereign legislative authority; and 3) There is no agency for the enforcement of International Law.

d) Define 'Pacta Sunt Servanda'.

Answer : "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". [Dec. 06; Apr. 07; Apr. 08; Nov. 09; Nov. 13; Dec. 14; Dec. 16].

e) Explain the purpose of United Nations.

Answer : The purpose of United Nations is primarily – 1) to maintain internal peace and security among the member nations; 2) to re-affirm faith in human rights; 3) to establish justice and respect international obligations; and 4) to promote social progress and better standard of life.

f) What is CEDAW ?

Answer : International Covenant on Elimination of all forms of Discrimination Against Women. [Nov. 07; Dec. 12].

g) State the right to encounter ships without nationality.

Answer : The coastal state exercises complete sovereignty over the territorial sea upto 12 nautical miles measured from it base line. Except the right of innocent passage through territorial sea and right to navigate possessed by the ship belonging to a foreign state, any invasion by any such foreign state can be encountered or challenged by the state having sovereignty over its territorial sea.

h) What are the kinds of Human Rights ?

Answer : In fact, there cannot be different kinds of Human Rights, but after the Universal Declaration of Human Rights, the General Assembly passed the international covenants giving rise to the assertion that there are basically two kinds of Human rights – 1) Civil and Political Rights; and 2) Economic, Social and Cultural Rights [Nov. 09; Nov. 10].

i) State the purpose of UNHCR.

Answer : The primary function or purpose of the United Nations High Commissioner for Refugees (UNHCR) is – 1) to provide international protection to the refugees within the High Commissioner's mandate and to seek permanent solutions to their problems by facilitating their

voluntary repatriation or their assimilation within new national communities. 2) to promote standards of treatment of refugees at par with basic human rights standards.

j) **On whose recommendations, the President of India appoints the Chairperson of NHRC ?**

Answer : The Chairperson of the NHRC is made by the President on the basis of the recommendation of Selection Committee consisting of i) the Prime Minister; ii) the Speaker of the Lok-Sabha; iii) Central Cabinet Minister of Home Affairs; iv) Leader of the opposition In the Lok-Sabha; and vi) the Deputy Chairman of the Council of Union.

Q. 2 : Write short notes on Any Four of the following : = 20.

- a) Essentials of a mediator.
- b) Composition of the International Court of Justice.
- c) Exclusive Economic Zone.
- d) National Commission on Minorities.
- e) Role of NGO's in the protection of Human Rights.
- f) Passage through International Straits.

Q. 3 : Answer Any Two of the following situational questions : = 12.

a) **The owners of two fishing vessels sailing under the Spanish flags went to the Court claiming that their ships containing fresh catch of fish had been captured by the United States. They claimed that they were not aware of the existence of war and that their vessel was fishing on the coast close to Cuba. No incriminating material like arms was found on the fishermen and they did not make any attempt to run the blockade after learning of its existence nor did they resist their arrest.**

i) Name the above mentioned case which deals with customary laws .

Answer : Paquette Habana & Lola Case (1900) 175, US Reports 677.

ii) What was the decision made by the United States Court in this case ?

Answer : Justice Orey of the United States Supreme Court in the above case, stated that, "International law is the part of our law, it must be administered by the courts of justice of appropriate jurisdiction". The term international law has been used in –

- a) Charter of United Nations.
- b) Statute of International Court of Justice.
- c) In the Constitution of various international organizations.

The Supreme Court of the U.S.A. declared that the Supreme Court of U.S.A. has the jurisdiction to try the case and decided that under the customary international law, the fishing boats were free from capture.

b) **In a judgement, the Supreme Court of India reinforced the argument that all the organs of the Government such as, legislature, executive and judiciary must act according to the Constitutional mandate of equality between men and women.**

i) Mention any two landmark judgements reinforcing the right to equality for women.

Answer : Article 15 (1) to (3) Prohibition of discrimination on the grounds of sex, etc – Landmark Judgements of the Supreme Court of India : 1) Vishakha & Others v/s. State of rajashtan, AIR 1997, SC 3011; 2) Nargesh Mirza v/s. Air India, SC 1829.

ii) Mention some of the measures taken by the Parliament to incorporate the above observation of the Supreme Court.

Answer : The above observation made by the Supreme Court, is actively incorporated by our Legislature by enacting the following Legislations and making beneficial provisions for women – 1) Welfare and safety of women in Factories Act, 1948; 2) Employment of women in mines as per the

Mines Act, 1952; 3) Providing maternity benefits to women in Maternity Benefits Act, 1961; 4) Employment of women as per the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, etc.

- c) Mr. Raj was detained illegally in prison for over two years after his release due to negligence of the jail authorities.

i) Explain the violation of the human rights in the above case.

Answer : In this case , there is a violation of the Fundamental or Human right – Right to Life and Personal Liberty.

ii) Identify the Articles of the Indian Constitution which have been violated in the above case.

Answer : 1) Article 21 : “Protection of life and personal liberty”; 2) Article 22 : “Protection against arrest and detention in certain cases”.

Q. 4 : Answer Any Four of the following : = 48.

- Explain ‘state’ under the International Law. Enumerate the different kinds of states.
- Explain ‘Recognition’ and various theories of recognition of states in International Law.
- Critically examine the rights of the prisoners in India. Explain in the context of some of the landmark cases decided by the Supreme Court.
- Explain the evolution of International Law and the role of the United Nations maintaining peace and order in the world.
- Explain in detail the Universal Declaration of Human Rights and its relevance in the modern world.
- Explain in detail the functioning of the National Human Rights Commission and discuss some of the recommendations made by the NHRC.

[28]

[January, 2019 (11/01/19)]

With Solutions

Please check whether you have got the right question paper.

Q. 1 : Answer the following in not more than 2 sentences : = 20.

1. What is the monist view of International Law ?

Answer : According to the Monistic theory propounded by two German scholars Moster and Mortem, municipal law (or internal law) and international law are the parts of only one legal system. Therefore, international law cannot be distinguished from the municipal legal system. There is only one legal system and that is the domestic legal system.

[Monists accept that the internal and international legal systems form a unity. Both, national legal rules and international rules that a state has accepted, for example, by way of treaty, determine whether actions are legal or illegal. According to monist view – the International Law does not determine which point of view is to be preferred, monism or dualism.... Both, a monist state and a dualist state can comply with international law. All one can say is that a monist state is less at risk of violating international rules.

because, its Judges can apply international law directly. But according to Dualists, national judges never apply international law, only that international law that has been translated into national law can be applied].

2. Define Recognition.

Answer : As defined by Fenwick, recognition of a state means, formal acknowledgement by the existing members of an international community of the international personality of a state or political group, not hitherto maintaining official relations with it. [Apr. 06; Dec. 06; Dec. 15; Nov. 11].

3. Why is a sovereignty considered an important element of State ?

Answer : Popular sovereignty is an important part of a nation state's government. Without it, the rights and liberties of its citizens are not fully protected by national or international standards. Also, the power and strength that the nation state holds is very important in the protection of the nation state. One could argue that a state without sovereignty is not a state at all.

4. What are bilateral treaties ?

Answer : The treaty concluded in two states which are parties to treaty is known as bilateral treaties. The rights and obligations which arise from the treaty is applicable only to the two states which are parties to it. [Apr. 08; Apr. 13].

5. Write any two functions of ILO.

Answer : International Labour Organization has four strategic objects or functions to perform. They are – 1) Promote and realize standards and fundamental principles and rights at work. 2) Create greater opportunities for women and men to decent employment and income. 3) Enhance the coverage and effectiveness of social protection for all. 4) Strengthen tripartism and social dialogue. 5) Provide technical assistance to various labour bodies. [State any two]. [Dec. 12].

6. Explain Disintegration of States with examples.

Answer : When State breaks into pieces, destroyed, or failed state, it is the disintegration of State. Examples : 1) failed state – due to escalation of communal group, ethnic or religious conflicts (It happened in Syria, Somalia, Myanmar, Yemen and Iraq . 2) Anarchic conflicts. 3) Armed conflicts; etc.

7. What is *ex aequo et bono* ?

Answer : This Latin term means “what is just and fair or according to equity and good conscience should be done”. This Latin phrase is used in the context of arbitration and it refers to the power of arbitrators to dispense with consideration of the law but consider solely what they consider to be fair and equitable in the case at hand.

8. What does the European Convention on Human Rights concerned with ?

Answer : The ECHR is an international human rights treaty between the states that are members of the Council of Europe (CoE). It is a treaty to protect the rule of law and promote democracy in European countries. This Convention came into force on September, 3, 1953.

9. Who constitutes the State Human Rights Commission ?

Answer : The SHRC is constituted by the State Government to exercise the powers and perform functions assigned to it under the Protection of Human Rights Act, 1993. [It consists of 1) a Chairman – Chief Justice of High Court; 2) Member – Judge of High Court; 3) Member – District Judge; 4) Two Members – Persons with knowledge and experience in this field; 5) Secretary – Executive officer of the Commission].

10. What is PUCL ?

Answer : Public Union for Civil Liberties (PUCL) is a human rights body formed in India in 1976 by socialist leader Mr. Jayprakash Narayan, as the People's Union for civil liberties and Democratic Rights (PUCDR).

Q. 2 : Write Short Notes on Any Four of the following : = 20.

1. De Facto Recognition. 2. UNESCO. 3. International Court of Justice. 4. Supreme Court & Human Rights. 5. Legal Nature of Judicial Decisions. 6. Continental Shelf.

Q. 3 : Solve Any Two of the following problems : = 12.

1. On January 23, 1925, the United States of America and the Netherlands referred their dispute concerning sovereignty over particular Islands to arbitration by a sole arbitrator to determine whether the Island in its entirety (territory) formed a part of the territory belonging to the United States of America or of the territory of Netherlands.

a) Which case is being referred to here and explain the facts of the case.

Answer : The case referred to here is – The Island of Palmas Arbitration.

Facts of the Case are as under –

The Palmas Island is situated half-way between the Phillipine Islands and the former Netherland East Indies. In 1906, there was a dispute between the U.S.A and the Netherlands regarding sovereignty over this Island. The contention of American Government was that the Island was ceded to the U.S by the treaty of 1808 by Spain. The Dutch Government (Netherland's Govt.) maintained that the Island was a part of its territory and that Spain from whom U.S.A claimed to have acquired sovereignty over the Island, never had any right over the same. The dispute was referred to the Permanent Court of Arbitration.

It was held that, though Spain was responsible for the discovery of the Island, it was not in effective control of the Island. On the other hand, the Netherland's East India Company was in possession of the Island and exercised sovereignty over the same since 1677.

b) What was the principle adopted by the Arbitrator in resolving the case.

Significance : (a) In his Award, Max Huber, the Arbitrator, described the principle of sovereignty in these terms – "Sovereignty, in the relation between States, signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a State". (b) It was also held in this case that if a State were to occupy a territory, there must be display of effective control and authority either by claiming sovereignty or by a State from which the State claiming sovereignty can prove that the title has been derived. (c) It is claimed by some writers that the award in the Island of Palmas case is an authority to support the doctrine of acquisitive prescription in International Law.

2. Mr. X was illegally detained in prison for over two years after his acquittal due to negligence of the jail authorities. Explain –

a) Is it a Human Rights violation ?

Answer : Yes, it is certainly a violation of Human Rights in this case.

b) Which Writ is available to Mr. X in this case ?

Answer : Mr. X can file a Writ of Habeas Corpus and obtain relief and compensation for his illegal detention.

3. Thirty-seven states of the world are land-locked states. Nepal is also a land-locked state and has no access to the sea for carrying out commercial activities.

a) Which UN Convention grants rights to land-locked states ?

Answer : Convention on Transit Trade of land-locked states of 1965 – Convention on the Law of Sea of 1982.

b) What are the rights of the land-locked states ?

Answer : Land-locked states have free access to and from the sea on equal terms with coastal states. The transit state (i.e. India) has all rights to take necessary measures. Transit state should not levy customs duties, taxes or other charges for and use by land-locked states except charges levied for specific services rendered in connection with such traffic. Nepal enjoys these rights through India. Agreement between two states on reciprocal basis can be followed to overcome any conflict of interest.

Q. 4 : Attempt Any Four of the following questions : = 48.

a) Explain the role played by NGO's in the protection of Human Rights. b) Explain the significance of the Fundamental Rights and Directive Principles provided in the Indian Constitution towards the protection of women and children. c) What is Territorial Sea ? Explain the various freedoms of High Seas with appropriate examples. d) Explain Territory, Modes of Acquisition and Loss of Territory. e) Explain the UN Convention on Law of Seas and its significance in bringing peace and harmony in the World. f) Elaborate on the sources of International Law.

[29]

[May, 2019 (09/05/19)]

With Solutions

N. B. : 1. All questions are compulsory. 2. Figures to the right indicate full marks. 3. Give case-law/reasons wherever necessary.

Q. 1 : Answer the following in not more than 2 sentences : = 20.

a) What is Article 38 (1) of the statute of International Court of Justice ?

Answer : Article 38 of the ICJ statute defines what sources of law the Court shall apply during the proceedings : (1) – The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply; The problem of the ICJ is that there is no normal law that it could be based on.

According to Article 38 (1) (d) of its Statute, the ICJ is also to apply "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law".

b) Distinguish between law making treaties and treaty of contract.

Answer : Law-making treaties involve two distinct operations – 1) the legislative operation, whereby rules are laid down; 2) the undertakings by the states to conform to such rules; Law making treaties are direct source of international law; Whereas, The treaty of contract deal with special agreements between parties to the treaty. Treaty of contracts are not generally, sources of international law, as they are intended to create special rights and duties only between the parties to the treaty.

c) When can the recognition of government be withdrawn ?

Answer : State comes into existence or new state comes into existence only when it is recognized by the international community (constitutive theory); According to declaratory or evidentiary theory, statehood or the authority of a new government exists even prior to and is independent of recognition. As per the resolution adopted in 1936 by the Institute of International Law, the recognition, once given, cannot be withdrawn. As a rule, recognition *de jure*, once given, is irrevocable. As a rule recognition *de facto* might be provisional and revocable, it may be withdrawn or it may be annulled. But the requirement is that the state must possess the qualification of statehood. The recognition of government/state ceases to have effect or it is withdrawn in case of the disappearance of one of the essential elements of statehood.

d) What is *Pacta Sunt Servanda* ?

Answer : It means that – “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”. [Apr.06; Dec.06; Apr.07; Apr.08; Nov.09; Nov.13; Apr.14; Dec.14; Dec.16; Apr.18].

e) Define Ozone Depletion.

Answer : Ozone Depletion means – “Destruction of the upper atmospheric layer of ozone gas caused by substances formed from breakdown of ozone depleting substance”. [Nov. 11; Apr. 15; Dec. 16].

f) Discuss two important issues from the case *Puttaswamy v/s. Union of India*.

Answer : Justice K. S. Puttaswamy (Retd.) and Anr. v/s. Union of India and Ors. is a landmark judgement of the Supreme Court of India, which holds that the Right to Privacy is protected as a fundamental constitutional right under Articles 14, 19 and 21 of the Constitution of India. The two important issues involved in this case are – 1) Constitutionality of Aadhaar project, and 2) Constitutionality of Section 377 of the Indian Penal Code, 1860. [Judgement delivered on 26th September, 2018].

g) What is right to Development ?

Answer : The Right to Development is an inalienable human right and every human being is entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. [The Declaration on the Right to Development was adopted by the General Assembly Resolution of 4th December, 1986 which has proclaimed this right]. [Nov. 08; Apr. 09; Nov. 09; Nov. 10; Nov. 13; Dec. 14; Apr. 16; Dec. 16].

h) State the importance of Magna Carta.

Answer : Magna Carta was granted by King John of England to the English barons in the year 1215 when they protested against the heavy taxes imposed by Richard I and they were unwilling to let King John rule again without concessions granted to them in taxes. Thus, Magna Carta was a protection given to the barons against arbitrary acts of the King. [Apr. 16; Jan. 18].

i) State the Principle of “Equal Pay for Equal Work” as enshrined in the Constitution of India.

Answer : Article 39 (d) of the Constitution of India states – “that there shall be equal pay for equal work for both, men and women”. [Apr. 16].

j) What do you mean by Land Locked State ?

Answer : A state whose boundaries are entirely surrounded by land is called “Land-locked state”. Convention on the Law of Sea, 1982 Article 124 (1) (a) state that – “the state which has no sea coast”. [Nov. 05; Apr. 08; Nov. 11; Apr. 14; Dec. 14].

Q. 2 : Write short notes [Any Four] :

= 20.

a) Peaceful Settlement of Disputes. b) CEDAW. c) International Labour Organization. d) National Commission for Minorities. e) Rights of Children in the Indian Constitution. f) Island of Palmas Case.

Q. 3 : Situational Problems [Any Two] :**= 12.**

- a) A Russian tourist was gangraped by the employees of the local hotel where she was staying while visiting a city. She left the country after the incident and a case was registered on her behalf for compensation.

1. Is there any breach of fundamental rights ? Explain your answer with reasons.

Answer : Yes, there is a violation of fundamental rights which are provided under Articles 21 and 22 of the Constitution of India. Article 21 guarantees right to life and personal liberty, and Article 22 guarantees right to protection against arbitrary arrest and detention.

2. Explain with case laws, if any, fundamental rights are available to foreign citizens.

Answer : Yes, fundamental rights are available to non-citizens also. In the Judgement given in the *Chairman, Railway Board & Others v/s. Mrs. Chandrima Das* [2000 (1) SCC p.265], the Supreme Court of India observed that the Declaration (UDHR) has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly, so the applicability of UDHR and principles may have to be read, if need be, into the domestic jurisprudence.

It was decided in *Anwar v/s. State of Jammu & Kashmir*, [AIR 1971 SCC p.337], the protection under Articles 21 & 22 are available not only to citizens but also to persons which would include non-citizens, foreigners, aliens or refugees as well.

- b) Bondana and Pacica are two neighbouring states having boundary dispute. To resolve their disputes, both the countries decide to approach International Court of Justice.

1. State the procedure followed by the countries to approach the International Court of Justice.

Answer : a) Only states concerned may apply to and appear before the Court; b) The Court is competent to entertain a dispute only if the states concerned have accepted its jurisdiction in one or more of the following ways – i) by the conclusion between them to submit the dispute to the Court, ii) by virtue of the jurisdictional clause, iii) through the reciprocal effect whereby each state has accepted the jurisdiction of the Court, iv) in cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides the issue; c) The Court then decides in accordance with international treaties and conventions in force.

2. Write the two famous cases decided by the International Court of Justice.

Answer : 1) *S.S. Lotus Case* (1927); 2) *Corfu Chanel Case* (1949).

- c) The 1972 Stockholm Conference had the effect of initiating worldwide participation and partnership in creating the awareness to preserve the Environment from further damage.

1. State two major suggestions of the Stockholm Conference for improvement of Environment.

Answer : The Stockholm Conference on Human Environment, held at Stockholm in June, 1972 contains 26 common principles of international policy for the improvement of the world environment. They are in the form of suggestions for all the nations and order to take proper steps for the improvement of environment – 1) Shaping action of people around the world for prudent care of the environment; 2) Industrialized nations (like America, Europe, etc.) to reduce the gap between themselves and developing countries (like Shrilanka, Bangladsh, etc.)

2. Write any two provisions which were inserted in the Indian Constitution as an impact of Stockholm Conference.

Answer : By the Constitution (42nd Amendment) Act, 1976 – 1) Article 48-A : “The State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country; 2) Article 51-A (g) : “It shall be the duty of every citizen of India – to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”.

Q. 4 : Answer the following [Any Four] :**= 48.**

- a) Define International Law. Explain in detail the various sources of International Law. b) Explain the principle of freedom of high seas. Describe its usefulness. c) Explain the status of the rights of Prisoners. d) Explain Human Rights. Trace its origin and development. e) Discuss the following : 1. European Human Rights Arrangements. 2. UDHR. f) Explain the Powers and Functions of NHRC.

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(For Five Years and Three Years Degree Course)

This New Question Paper Pattern consists of Four Questions for 100 marks.

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2. **Short explanatory/Definitional or Analytical notes on any Four out of Six** – 5 marks each = **20 marks**;
3. **Situation based questions any Two out of Three (number of sub-division questions not more than two – each 3 marks) – 6 marks each = 12 marks**;
4. **Essay type questions/Full questions any Four out of Six – 12 marks each = 48 marks**.

N.B.

Students please note that, only question paper pattern is changed, not the Syllabus. The Revised Syllabus which came into effect from the Academic year 2004 – 2005 remains the same.

- 1) *Previous question paper pattern which consisted of 40 objective questions including multiple choice/Tick the correct option or Fill in the blanks or State true or false or Match the following, has been reduced to 20 marks for two sentence answers. Therefore, students are advised to concentrate more on such questions which are*

underlined all through this Book and such questions are also available in the earlier University Examination Question Papers which are given with their Solutions at the end of this Book.

- 2) Previous question paper pattern consisted of 2 Situation based problems each for 10 marks, have been reduced to each for 6 marks.*
- 3) Question on 4 short notes each for 5 marks remains the same.*
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From the above changes, it can be seen that our Book, will be more useful to the students from the examination point of view according to the changed question paper pattern.

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