

1. a) Definition of International humanitarian law. b) Write down the Sources & scope of International humanitarian law.

What is IHL?

- ✓ International humanitarian law(IHL) is that part of international law that governs the conduct hostilities or armed conflicts.
- ✓ It lays out the responsibilities of States and non-State armed groups during an armed conflict.
- ✓ In particular, IHL is a set of rules which seek to
 - Limit the effects of armed conflict
 - Protect individuals in armed conflict
 - Restrict the methods & means of warfare
 - Facilitate the restoration of **pence**
- ✓ These rules strike a balance between the humanitarian concerns & the military requirements of States

IHL is also known as -

- Law of Armed Conflict
- Law of War
- Human Rights in Armed Conflict
- ✓ IHL applies to armed conflicts.
- ✓ IHL is concerned with the effects of war, not its legality. It does not determine whether a war is legal; that is within the purview of the UN Charter.

Scope & Application of IHL

- ✓ IHL is applies only to armed conflicts-
 - International Armed Conflict
 - State vs. State
 - Wars of national liberation
 - Non-International Armed Conflict
 - State vs. Rebels
 - Rebels vs. Rebels
- ✓ It applies equally to all sides, irrespective of who started the war or who is the attacker
- ✓ IHL is not applicable-
 - In times of peace
 - To internal tensions or disturbances, e riots or isolated acts of violence.

Sources of IHL

- The law of warfare existed historically as a set of practices developed over hundreds of years, but in the mid-19th century States began to codify the law into treaties
- The laws of war are to be found in -
 - Leading religions
 - Practices of warlords
 - Writings of philosophers
 - Customary rules of warfare
 - Multilateral treaties
 - Concluded mostly in Geneva & the Hague in the 19th & 20 centuries

Sources of Modern IHL

- **Treaty Law**
 - Treaties are the written sources of IHL whereby States formally establish certain rules
- **Specific Treaties, e.g.**
 - Hague Convention of 1899 & 1907
 - Four Geneva Conventions of 1949
 - Additional Protocols & II of 1977
- **Customary International Law**
- Jus Cogens (Peremptory Norms)
 - General Principles of Law recognized by civilized nations
- Judicial Decisions & Teachings
 - Rulings & advisory opinions of International Courts & Tribunals
- International Law of Human Rights
 - Covenants, Declarations Resolutions

b) Name of 4 Geneva Convention with their date. Scope and application of common article 3.

Four Geneva Conventions of 1949...

- were adopted at the Diplomatic Conference of Geneva on 12 August 1949
- entered into force on 21 October 1950
- are at the core of IHL
- Result from a process developed in stages in the 19th & 20th centuries.

Revision, Expansion, Replacement & Addition

GCI of 1949 contains 64 Articles

- ✓ Represents the 4th updated version of GCs adopted in 1864, 1906 & 1929

GC II of 1949 contains 63 Articles

- ✓ Replaced the Hague Convention of 1907

"GC III of 1949 contains 143 Articles

- ✓ Replaced the 1929 GC on the PoW

GC IV of 1949 contains 159 Articles

- ✓ Supplements the Hague Regulations of 1907 on the same subject

Four Geneva Conventions of 1949

4 GCs of 12 August 1949 -

I. Geneva Convention for the Amelioration of the Condition of the Wounded & Sick in Armed Forces in the Field-1949

II. Geneva Convention for the Amelioration of the Condition of Wounded, Sick & Shipwrecked Members of Armed Forces at Sea-1949

III. Geneva Convention relative to the Treatment of Prisoners of War 1949

IV. Geneva Convention relative to the Protection of Civilian Persons Time of War-1949

Common Article 3 of GCs of 1949...

- ✓ IHL originally focused on IAC
- ✓ It has evolved to include NIAC
- ✓ Common Article 3 of the 1949 GCs deals with the armed conflict of non-international character (NIAC)

Scope and Application of Common Article 3 of the 1949 Geneva Conventions :

Background:

Originally, International Humanitarian Law (IHL) was mainly concerned with International Armed Conflicts (IACs)—wars between different countries. Over time, IHL evolved to also cover Non-International Armed Conflicts (NIACs)—conflicts that occur within a single country, like civil wars.

What is Common Article 3?

Common Article 3 is a part of the 1949 Geneva Conventions and is a fundamental rule that applies to NIACs.

It's called "common" because it appears in all four of the Geneva Conventions.

Key Points of Common Article 3:

Protection for All: Common Article 3 ensures that everyone not actively involved in the fighting (like civilians, wounded soldiers, and those who have surrendered) must be treated humanely.

Prohibited Acts: It strictly forbids certain actions, such as:

- ✓ Violence against life and person, especially murder, mutilation, cruel treatment, and torture.
- ✓ Taking hostages.
- ✓ Outrages upon personal dignity, particularly humiliating and degrading treatment.
- ✓ The passing of sentences and carrying out of executions without a fair trial.

Why is it Important?

- Common Article 3 is crucial because it provides a minimum standard of humane treatment during internal conflicts.
- It applies regardless of who is fighting—whether government forces, rebel groups, or other armed groups—ensuring basic protections even in the most challenging situations.

Application:

- ✓ Universal Relevance: The rules in Common Article 3 must be followed by all parties in a NIAC, no matter where the conflict happens.
- ✓ No Exceptions: There are no exceptions or excuses for not following these rules, even in the most intense conflicts.

In summary, Common Article 3 of the 1949 Geneva Conventions sets basic humanitarian rules that must be followed in all internal armed conflicts, ensuring that non-combatants and those no longer fighting are treated with humanity and dignity.

c) What is Martens Clause? Write down the quotation of Martens Clause.

The Martens Clause...

- ✓ In cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience.
- ✓ The Martens Clause is part of customary international law

The Martens Clause is a significant provision in international humanitarian law that emphasizes the protection of individuals in situations not explicitly covered by existing treaties or

agreements. Named after the Russian jurist Friedrich Martens, who introduced it during the 1899 Hague Peace Conference, the clause is intended to ensure that even in the absence of specific laws, basic principles of humanity and the dictates of public conscience should guide the conduct of parties in conflict.

Martens Clause Quotation:

The original wording of the Martens Clause, as found in the preamble of the 1899 Hague Convention (II) on the Laws and Customs of War on Land, is:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the dictates of the public conscience."

d) What is ICRC? What is the 7 basic principle of ICRC?

ICRC

The International Committee of the Red Cross (ICRC) is a humanitarian organization that provides protection and assistance to victims of armed conflict and other situations of violence. Founded in 1863, the ICRC is headquartered in Geneva, Switzerland, and operates globally, especially in conflict zones.

Role of ICRC

- ✓ Protect the lives & dignity of victims of armed conflict
- ✓ Conduct humanitarian activities in IAC
 - Visit prisoners & victims
 - Organize relief operations
 - Facilitate family reunification
- ✓ Offer these services in NIAC
- ✓ Take cognizance of the breaches of IHL
- ✓ Interpret IHL
- ✓ Promote & strengthen IHL.

7 fundamental principles of ICRC

- ✓ humanity
- ✓ Impartiality
- ✓ Neutrality

- ✓ Independence
- ✓ Universality
- ✓ Voluntary service
- ✓ Unity

e) Write down the role of ICRC on the basis of tribe & Disturbance internal conflict.

Human Rights Law

Role of ICRC

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- ✓ Independence
- ✓ Universality
- ✓ Voluntary service
- ✓ Unity

2. a) Write down the definition and characteristics of Human rights. Discuss in details.

Definition of Human Rights

- ✓ Human rights are those inalienable, inviolable & natural rights which are universally inherent in all human beings without distinction as to race, sex, color, religion, nationality, etc.
- ✓ These rights & freedoms are indispensable for the free & full development of a human being.

- ✓ Human rights are derived from the inherent worth & dignity of, and the respect for, the human person.
- ✓ Man becomes entitled to the enjoyment & realization of these rights upon birth.

Characteristics of Human Rights

Main Characteristics of Human Rights -

- ✓ Universal inherence
- ✓ Inalienability
- ✓ Inviolability
- ✓ Non-discrimination
- ✓ Indivisibility
- ✓ Interdependence

b) Write down the similarity & difference between International Humanitarian Law and International Human Rights Law.

The similarities and differences between International Humanitarian Law (IHL) and International Human Rights Law (IHRL):

Aspect	International Humanitarian Law (IHL)	International Human Rights Law (IHRL)
Purpose	Regulates conduct during armed conflict to protect those not involved in fighting.	Protects the rights and freedoms of individuals at all times, both during peace and war.
Application	Applies only during armed conflicts (wars).	Applies at all times, in peace and during war.
Focus	Protects civilians, prisoners of war, and the wounded. Limits the means and methods of warfare.	Protects individual rights such as freedom of speech, right to life, and protection from torture.
Enforcement	Enforced by international courts like the International Criminal Court (ICC) and tribunals.	Enforced by bodies like the United Nations and regional human rights courts (e.g., European Court of Human Rights).
Origins	Rooted in the Geneva Conventions and other treaties related to armed conflict.	Rooted in the Universal Declaration of Human Rights and various international treaties.
Violations	Violations are considered war crimes, such as targeting civilians or	Violations include acts like torture, unlawful detention, and discrimination.

Aspect	International Humanitarian Law (IHL)	International Human Rights Law (IHRL)
	using banned weapons.	
Key Principle	Principle of distinction: differentiates between combatants and non-combatants.	Principle of universality: human rights apply to everyone, everywhere, regardless of the situation.

This chart highlights how IHL and IHRL both aim to protect individuals, but they do so in different contexts and under different rules.

The similarities between International Humanitarian Law (IHL) and International Human Rights Law (IHRL):

Aspect	Similarity
Purpose	Both aim to protect human dignity and human life.
Focus	Both seek to protect individuals from harm and abuse.
Human Rights	Both recognize and protect basic human rights, like the right to life and the prohibition of torture.
Protection for Vulnerable Groups	Both focus on protecting vulnerable groups, such as civilians, children, and prisoners.
International Treaties	Both are based on international treaties and agreements.
Accountability	Both systems hold violators accountable through international courts and bodies.
Universal Application	Both apply to all people, regardless of nationality, race, or religion.

This chart highlights how both IHL and IHRL are concerned with protecting human beings and ensuring their rights and safety.

c) Write down the Human rights & Fundamental rights (part 3) in constitution.

Human Rights in Bangladesh Constitution

- ✓ Reference in the Preamble
- ✓ Influenced by UDHR
 - Part II - Fundamental Principles of State Policy (Art 8 -25)
 - ❖ 2nd Generation of HR
 - ❖ Non-justiciable
 - Part III - Fundamental Rights (Art 26-47A)

- ❖ 1st Generation of HR
- ❖ Justiciable
- ✓ Different types in different perspectives
 - ❖ Enforceability
 - ❖ Derogation
 - ❖ Restrictions & Limitations

Fundamental rights in Bangladesh Constitution

2 Types of Guarantee

Doctrine of Judicial Review

Art. 26: Laws inconsistent with Fundamental Rights to be void

(1) All existing law inconsistent with the provisions of this Part shall, to the extent of such inconsistency, become void on the commencement of this Constitution.

(2) The State shall not make any law inconsistent with any provisions of this Part, and any law so made shall, to the extent of such inconsistency, be void.

Doctrine of Judicial Enforcement

Art. 44: Enforcement of Fundamental Rights

(1) The right to move the High Court Division in accordance with Art. 102 (1), for the enforcement of the rights conferred by this Part, is guaranteed.

d) What is the Human rights provision of the UN Charter? Write in details

Human Rights Provisions in UNC...

9 Direct & Explicit References to HR in the UNC

- ✓ The Preamble
- ✓ 8 Articles

HR provisions in the relevant Articles of UNC are broadly of 2 categories -

- ✓ Promotion of HR as a purpose & objective of UN
 - Art. 1(3), 55(c), 76(c)
- ✓ Fulfillment of HR Obligations by UN & its Members
 - Art 13(1)(b), 56, 60, 62(2), 68

Preamble of the UN Charter:

The Preamble of the United Nations (UN) Charter expresses the organization's core objectives and the values it seeks to promote:

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

Human Rights Provisions in the UN Charter (Simplified):

1. Promotion of Human Rights as a Purpose & Objective of the UN:

- Article 1(3): Promotion of International Cooperation and Respect for Human Rights

The UN aims to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

- Article 55(c): Universal Respect for, and Observance of, Human Rights

The 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 76(c): Advancement of Human Rights in Trust Territories

The UN shall promote the development of self-government and respect for human rights and fundamental freedoms in territories under its administration.

2. Fulfillment of Human Rights Obligations by the UN & Its Members:

- Article 13(1) (b): General Assembly's Role in Promoting Human Rights

The General Assembly shall initiate studies and make recommendations to promote international cooperation in the political field and encourage the progressive development of international law and its codification, including promoting human rights.

- Article 56: Member States' Commitment to Act Jointly for Human Rights

All Members pledge to take joint and separate action in cooperation with the UN to achieve the purposes set forth in Article 55, which includes promoting human rights.

- Article 60: Assignment of Human Rights Responsibilities within UN Organs

The responsibility for the fulfillment of the purposes and objectives of the UN, including human rights, is vested in the General Assembly and, under its authority, the Economic and Social Council.

- Article 62(2): ECOSOC's Authority to Make Recommendations on Human Rights

The Economic and Social Council may make recommendations to promote respect for, and observance of, human rights and fundamental freedoms for all.

- Article 68: Establishment of Human Rights Commissions by ECOSOC

The Economic and Social Council shall set up commissions, including those related to human rights, to perform the functions assigned to it by the Charter.

Summary:

The UN Charter emphasizes the promotion and protection of human rights as one of its primary purposes. Specific articles outline the UN's commitment to advancing human rights globally and ensure that both the UN and its member states take action to fulfill these obligations. The Charter establishes human rights as a central objective, requiring international cooperation and the active participation of all member states in promoting respect for these fundamental rights.

e) Write down about UN charter based human rights monitoring bodies.

UN Human Rights Monitoring Bodies

Two Types of UN Human Rights Monitoring Bodies

- ✓ Charter-based Bodies
- ✓ Treaty Bodies

These two systems complement each other

They work through the mechanism of monitoring & accountability -

- ✓ Information gathering
- ✓ Reporting
- ✓ Dialogue
- ✓ Recommendations
- ✓ Implementation & Follow-up

f) Write down the significance and importance of universal declaration of human rights. Write down the preamble of universal declaration of human rights.

Significance & Legal Effect

- ✓ An extension of the UN Charter
- ✓ Magna Carta for mankind
 - A common standard of achievement for all peoples & all nations
 - Minimum standards - Intended as a first step
- ✓ Though a non-binding instrument, part of customary international law
- ✓ Inspirational & energizing document
 - A milestone with tremendous influence on global society
 - Foundation for binding int'l treaties
 - Bridge differences between western & socialist views on HRs
 - Adopted in or has influenced most national constitutions
- ✓ Widely cited by Govts, academics, lawyers, courts & individuals
- ✓ Guinness Book of Records -
- ✓ Most Translated Document 360 languages

Significance and Importance of the Universal Declaration of Human Rights (UDHR):

✓ **Foundation of Human Rights:**

The UDHR is the first global document that clearly defines the basic rights and freedoms all people are entitled to, regardless of who they are or where they live. It serves as the foundation for human rights laws and protections worldwide.

✓ **Universal Recognition:**

The UDHR was adopted by the United Nations in 1948 and has since been accepted by almost every country in the world. It promotes the idea that human rights are universal, meaning they apply to everyone, everywhere, without exception.

✓ **Guidance for Laws and Policies:**

The principles in the UDHR have inspired many national constitutions, laws, and international treaties. Governments use it as a guide to protect the rights of their citizens, ensuring that everyone is treated with dignity and respect.

✓ **Protection Against Injustice:**

The UDHR provides a common standard for what is right and wrong when it comes to how people are treated. It protects against injustices like discrimination, torture, and slavery, and promotes fairness, equality, and freedom.

✓ **Empowerment of People:**

By recognizing their rights, the UDHR empowers people to stand up against oppression and demand justice. It encourages individuals and communities to hold their governments accountable for respecting and upholding human rights.

✓ **Promotion of Peace and Security:**

The UDHR fosters a world where everyone's rights are respected, which helps prevent conflicts and promotes peace. When people's rights are protected, societies are more stable and secure.

✓ **Global Standards:**

The UDHR sets a global standard for human rights, encouraging cooperation among nations to uphold these rights. It helps create a common understanding of the importance of human dignity, freedom, and equality.

In summary, the Universal Declaration of Human Rights is a landmark document that has had a profound impact on the world by establishing clear standards for human rights, guiding laws and policies, and promoting a more just, peaceful, and equitable world.

g) Discuss about the International bill of human rights. Write two convent name and identical provisions.

International Bill of Human Rights

The following instruments are collectively known as the International Bill of Human Rights -

- ✓ Universal Declaration of Human Rights - 1948
- ✓ International Covenant on Civil & Political Rights-1966
- ✓ International Covenant on Economic, Social & Cultural Rights 1966

The Protocols Optional to the 1966 Covenants also fall within the purview of the International Bill of Human Rights

The two Covenants were intended to -

- ✓ Provide a binding effect to the rights & freedoms listed in the UDHR
- ✓ Enumerate a monitoring & enforcement mechanism

Two convent name

- ✓ International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - Adopted by UNGA: 1966

- Entered into Force: 1976
- States Parties: 171
- Contents Structure: Preamble + 31 Articles
- ✓ International Covenant on Civil and Political Rights (ICCPR)
 - Adopted by UNGA in 1966)
 - Entered into force (1976)
 - States Parties (117)
 - Contents Structure: Preamble + 14 Articles

Identical Provisions of ICCPR & ICESCR

There are some similarities & dissimilarities between ICCPR & ICESCR

- ✓ Both are international treaties adopted under the auspices of the UN
- ✓ Both the Covenants establish their respective monitoring mechanisms
- ✓ ICCPR catalogues civil & political rights while ICESCR lists economic, social & cultural rights
- ✓ ICCPR has two Optional Protocols but ICESCR has one

Yet, there are some identical provisions in these two Covenants

- ✓ Preamble Recognition that human rights derive from the inherent dignity, worth & status of human beings
- ✓ Article 1 Right to self-determination
- ✓ Article 2 Principle of non-discrimination
- ✓ Article 3 States to ensure equal rights for men & women
- ✓ Article 5 Safeguards against derogation, restrictions & limitations

3. a) Write the definition of discrimination against women according to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW is -

- A product of the global women's movement to address gender inequality.
- Often described as an international bill of human rights for women
- A treaty that is exclusively dedicated to gender equality
- ✓ Adopted in 1979 by UNGA, Entry into force: 1981
- ✓ States Parties: 189
 - Bangladesh ratified it in 1984, with certain reservations
 - Not ratified by 6 Countries - Sudan, Somalia, Iran, Palau, Tonga, USA

Optional Protocol to CEDAW

- ✓ Address violations of women's rights by establishing two specific mechanisms
 - A complaints system
 - An inquiry procedure
- ✓ Adopted in 1999, Entered into force: 2000
- ✓ States Parties 107
- ✓ Bangladesh ratified Op-CEDAW in 2000, with a declaration

b) Discuss about 12 critical area platforms for action in Beijing declaration.

Beijing Declaration & Platform for Action

- ✓ The Beijing Declaration and Platform for Action - 1995
- ✓ Adopted unanimously -
 - by 189 countries
 - at the 4th World Conference on Women in Beijing in 1995
- ✓ It is the global agenda on women's empowerment & gender equality
- ✓ It focuses on 12 areas of concern where action is most urgently needed –
 1. Women & poverty
 2. Women in power & decision-making
 3. Education & training of women
 4. Institutional mechanism for advancement of women
 5. Women & health
 6. Human rights of women
 7. Violence against women
 8. Women & the media
 9. Women & armed conflict
 10. Women & the environment
 11. Women & the economy
 12. The girl-child

c) Write down the powers of CEDAW committee

CEDAW Committee

Committee on the Elimination of Discrimination Against Women

- Commonly known as the CEDAW Committee

- Established under Art 17 of the Convention
- A body of 23 independent experts

Role of the CEDAW Committee (Art 18-22)

- ✓ Monitor implementation of the Convention
- ✓ Review State reports & issue Concluding Observations
 - i.e., concerns & recommendations to the State Party
- ✓ Receive communications from individuals or groups
- ✓ Initiate inquiries into grave or systematic violations
- ✓ Hold general discussions & formulate General Recommendations
 - i.e., suggestions & clarifications directed to States
- ✓ Report annually to UNGA through ECOSOC

d) Write down the provision related to women in Bangladesh constitution specially only for women.

CEDAW Reservations & Bangladesh

- ✓ Bangladesh ratified CEDAW in 1984, with certain reservations
- ✓ Under Art 28(1) of CEDAW & Art 2(1)(d) of Vienna Convention on the Law of Treaties (VCLT) -1969, Bangladesh maintains reservations on 2 Articles of CEDAW
 - **Art 2** State Obligation to condemn & eliminate discrimination against women in all its forms
 - **Art 16(1)(c)** State Obligation to ensure equal rights & responsibilities in marriage & divorce

4. a) Write down International refugee law. Discuss it.

What is International Refugee Law?

International Refugee Law is a set of rules and principles designed to protect people who are forced to flee their home countries due to fear of persecution, war, or violence. These individuals are called "refugees."

Key Principles of International Refugee Law:

- Right to Seek Asylum:

Refugees have the right to seek asylum in another country to escape danger. This means they can ask for protection in a foreign country if they fear for their safety in their home country.

- Non-Refoulement:

One of the most important principles of refugee law is "non-refoulement." This means that a refugee cannot be sent back to a country where their life or freedom would be at risk. Countries must ensure that refugees are not returned to places where they face serious harm.

- Rights and Protections for Refugees:

Refugees have specific rights under international law, including the right to not be punished for illegally entering a country if they are seeking asylum. They are also entitled to access basic services like healthcare and education and should be treated with dignity and respect.

- Durable Solutions:

International Refugee Law seeks to find long-term solutions for refugees, which include:

- Voluntary Repatriation: Refugees can return home when it is safe to do so.
- Local Integration: Refugees can integrate into the society of the country where they have sought asylum.
- Resettlement: Refugees may be resettled in a third country if they cannot stay in their host country or return home.

International Agreements:

The cornerstone of International Refugee Law is the 1951 Refugee Convention and its 1967 Protocol. These documents define who is a refugee and outline the rights and responsibilities of both refugees and the countries that host them. The United Nations High Commissioner for Refugees (UNHCR) is the main international body responsible for protecting and supporting refugees worldwide.

Challenges in International Refugee Law:

- **Increasing Numbers:** With growing conflicts and persecution worldwide, the number of refugees is increasing, putting pressure on the international system.
- **Host Country Burdens:** Some countries, especially those near conflict zones, bear a heavy burden in hosting large numbers of refugees, often with limited resources.
- **Protection Gaps:** Not all countries have signed the 1951 Refugee Convention, and some do not fully respect the rights of refugees.

Why is International Refugee Law Important?

International Refugee Law is crucial because it provides a safety net for people who have lost everything due to conflict or persecution. It ensures that refugees are protected and that their basic human rights are respected, regardless of where they come from.

b) Write down non reformat law.

Legal Framework

International Law

- ✓ International Human Rights Law
 - Applicable at all times (in peace time & during armed conflicts)
- ✓ International Humanitarian Law
 - Applicable during armed conflicts

Specific UN Instruments for LEOS

- ✓ Code of Conduct for LEOS-1979
- ✓ Basic Principles les force Firearms by LEOs-1990

Domestic Law

- ✓ CrPC-1898
- ✓ Penal Code-1860
- ✓ PRB-1943

Basic Principles on the Use Of Force

- ✓ Legality
- ✓ Necessity
- ✓ Proportionality
- ✓ Accountability

c) Write down Regional human right system. Discuss it. Write down three Regional human right systems. What are their common features?

Regional Human Rights Systems

Chapter VIII (Art 52-54) of the UN Charter allows the existence of the regional arrangements for

- ❖ Maintenance of international peace & security
- ❖ Pacific settlement of local disputes

Major Regional Human Rights Systems

- ❖ The European System -The Paramount Role of the Court
- ❖ The Inter-American System -Promoting Democracy
- ❖ The African System -Rights & Duties

Common Features, Significance & Importance

Common Features

- ❖ Established under the auspices of an IGO "AU, OAS, COE
- ❖ Only States may be held accountable for HR violations
 - ✓ do not prosecute individuals or decide individuals' responsibility
- ❖ A complaints mechanism
- ❖ Monitoring & promotion activities

Significance & Importance

- ✓ Assist Govts in the implementation of obligations
 - ❖ Recommendations of TB, SP & UPR
- ✓ Provide people with more accessible protection mechanisms
 - ❖ Principle of domestic exhaustion
- ✓ Raise people's awareness of HR
- ✓ Provide input to development of HR standards & mechanisms
- ✓ Help Govts to better address regional HR concerns
 - ❖ Migration, transnational crime & environmental disasters

5. a) Write down European convention on HR (1950). European convention on HR is a living Instrument for human rights. Explain it.

European Convention on Human Rights (1950):

The European Convention on Human Rights (ECHR) is an international treaty adopted by the Council of Europe in 1950, which came into force in 1953. It was created to protect human rights and fundamental freedoms in Europe. All member states of the Council of Europe are bound by the Convention, and they are required to ensure that their laws and practices comply with the rights it enshrines.

ECHR - A Living Instrument

- ✓ The European Convention on Human Rights is termed as "a living instrument."

- ✓ This "living instrument" doctrine has, however, been used from the beginning by the European Court of Human Rights
- ✓ The doctrine was first articulated in the case of *Tyrer v. United Kingdom* (1978).
- ✓ It was observed by the ECtHR in the judgment of the case that "the Convention is a living instrument which must be interpreted in the light of present-day conditions"
- ✓ In fact, the European Convention on Human Rights evolves
 - by means of the interpretation of its provisions by the ECtHR, and
 - When Protocols add new rights
 - eg., OP13 on abolition of death penalty, or OP12 on non-discrimination
- ✓ Thus, through the case-law as well as the adoption of Additional Protocols, the European Convention has become "a living instrument"

European Convention on Human Rights as a Living Instrument:

The ECHR is often described as a "living instrument" for human rights. This means that:

- **Evolving Interpretation:**

The rights in the ECHR are interpreted in light of current conditions and societal changes. The European Court of Human Rights adapts its judgments to reflect new challenges and developments in human rights, ensuring the Convention remains relevant over time.

- **Adaptability to New Situations:**

As society evolves, new issues and types of cases emerge that were not anticipated when the ECHR was first written. The "living instrument" concept allows the Court to interpret the Convention in ways that address these new situations, ensuring that the protection of human rights keeps pace with modern developments.

- **Continuous Development:**

The ECHR is not static; it continues to develop through the case law of the European Court of Human Rights. This ongoing process strengthens the protection of human rights across Europe and ensures that the Convention can respond to new and emerging threats to individual freedoms.

- **Progressive Expansion of Rights:**

The "living instrument" doctrine has allowed for a broader interpretation of rights over time, expanding protections in areas like privacy, family life, and non-discrimination. This progressive approach helps the ECHR stay relevant in a changing world.

In summary, the European Convention on Human Rights is a cornerstone of human rights protection in Europe. Its designation as a "living instrument" reflects its ability to adapt and evolve in response to new challenges, ensuring that it continues to protect and promote human rights in a dynamic and changing world.

b) Discuss the statement with special reference to of the role of the EU court of Human Rights.

Guaranteed Rights & Freedoms

Physical Integrity & dignity of a person

- Life, liberty & security
- Torture or inhuman treatment
- Slavery & servitude

Protection of personal life

- Privacy
- Thought, conscience & religion
- Marriage
- Non-discrimination

Due procedure before courts of law

- Fair trial
- Retroactivity
- Effective legal remedy

Communication & participation in society

- Opinion & expression
- Assembly & association

European Social Charter-1996

An Overview of the European Social Charter -

- Adopted 1996,
- Entry into force 1999
- Guarantee economic & social rights,
- States parties report every year
- Additional Protocol to the ESC-1995/1998
- provide for a system of collective complaints

Monitoring & Enforcement Machinery

- European Committee of Social Rights
- a body of 15 independent experts serving for 6 yrs, elected by CoE Committee of Ministers
- Committee of Ministers

Housing

- Adequate & affordable housing
- Housing benefits

Health

- Accessible & effective health care facilities

Employment

- Child labour,
- Fair working conditions
- Fair wages,
- Reasonable working hours

Legal & Social Protection

- Sexual & other forms of exploitation

Education

- Free primary & secondary education
- Special care for disabled children

Movement of Persons

- Family reunion
- Freedom to leave the country
- Non-discrimination

5. Write down the definition of enforced involuntary disappearance. Elements or components of enforced involuntary disappearance. What is the impact of enforced involuntary disappearance in human, society and country?

Definition of Enforced Disappearance

- ✓ The term 'enforced disappearance' refers to the arrest, detention or abduction of a person, followed by a refusal to acknowledge the fate of that person.
- ✓ According to Art 2 of ICPED-1910,
 - Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

ED is thus characterized by the presence of 3 constitutive & cumulative elements -

- ✓ Deprivation of liberty
- ✓ Involvement of government officials, at least by acquiescence
- ✓ Refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person

Almost similar definition exists in other international instruments, e.g.. Declaration on the Protection of All Persons from ED-1992

Impact of Enforced Disappearance

Enforced disappearance violates a wide range of human rights, including -

- ✓ Right to liberty & security of the person
- ✓ Freedom from torture & other cruel, inhuman or degrading treatment or punishment
- ✓ Right to the humane conditions of detention
- ✓ Right to recognition as a person before the law
- ✓ Right to the protection of the law
- ✓ Right to a fair trial
- ✓ Right to an effective remedy, including reparation & compensation
- ✓ Right to a family life
- ✓ Right to life (if the disappeared person is killed or his fate is unknown)
- ✓ Right to information

It also results in severe violations of economic, social & cultural rights for direct & indirect victims.

6. Write down the use of force & firearms by law enforcement agencies according to UN Conduct & basic principle of use of force and firearms.

The United Nations has established guidelines for the use of force and firearms by law enforcement agencies, emphasizing the need for restraint, legality, and respect for human rights. Below are the key principles according to the UN Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:

1. Legality

- Lawful Purpose:

Law enforcement officials may only use force and firearms to achieve a lawful objective. The use of force must comply with national laws and international human rights standards.

- Respect for Human Rights:

The use of force must always respect the human rights of all individuals, including the right to life, security, and dignity.

2. Necessity

- Minimal Force:

Force should only be used when absolutely necessary to achieve a legitimate law enforcement objective. Non-violent means should be attempted first whenever possible.

- Prohibition of Excessive Force:

Force must not exceed what is necessary to prevent a crime or to apprehend an offender. Excessive force is prohibited.

3. Proportionality

- Balanced Response:

The level of force used must be proportionate to the seriousness of the threat posed. Lethal force should only be used when there is an imminent threat to life or serious injury.

- Escalation and De-escalation:

Law enforcement officials should use a graduated approach to force, escalating only when necessary and de-escalating when the threat diminishes.

4. Accountability

- Reporting and Transparency:

Any use of force or firearms must be reported promptly to superior officers. There should be transparency and clear documentation of the incident.

- Investigation of Incidents:

All incidents involving the use of force or firearms, especially those resulting in injury or death, must be thoroughly and impartially investigated.

- Consequences for Misuse:

Law enforcement officials who misuse force or firearms should be held accountable through disciplinary or criminal proceedings, depending on the severity of the misuse.

5. Non-Lethal Measures

- Preference for Non-Lethal Methods:

Whenever possible, law enforcement officials should use non-lethal methods, such as verbal warnings, physical restraint, or less-lethal weapons like tasers or batons.

- Training on Non-Lethal Force:

Law enforcement officials should be properly trained in non-lethal methods and the appropriate use of force, ensuring that they can effectively and safely manage situations without resorting to lethal force.

6. Use of Firearms

- Last Resort:

Firearms should only be used as a last resort when there is an imminent threat of death or serious injury to the officer or others.

- Warning Before Shooting:

If time and circumstances permit, a clear warning should be given before using a firearm. The warning should be sufficient to give the suspect a chance to surrender or de-escalate the situation.

- Targeting and Precaution:

Law enforcement officials should aim to minimize harm when discharging firearms. They should avoid actions that may result in unnecessary injury or death, such as firing into crowds.

7. Protection of Vulnerable Groups

- Special Care for Vulnerable Populations:

Law enforcement officials should take extra precautions when dealing with vulnerable individuals, such as children, the elderly, or persons with disabilities, to ensure that the use of force is appropriate to their specific circumstances.

8. International Cooperation

- Global Standards:

Countries should cooperate internationally to adopt and implement these principles, ensuring that law enforcement practices are consistent with global human rights standards.

These guidelines are intended to ensure that law enforcement agencies operate in a manner that is fair, just, and respectful of human dignity, while still being effective in maintaining public safety and order.

7. What is escalation and de-escalation of force? What is force continuum or force model?

Write down the use of force continuum.

Escalation of Force

- ✓ The intensification of defending/protecting oneself or others and determining how much force should be used in a situation
- ✓ Involve increase in the intensity of a conflict and in the severity of tactics used in pursuing it
- ✓ Consist in a Use-of-Force Model/Continuum of Force
 - A law enforcement concept that guides the actions of LEOs in a situation requiring the use of force
 - Govern how, when, under what circumstances & to what extent LEOs should use force

De-escalation of Force

- **De-escalation of Force**
 - A method to defuse a crisis before it reaches the point of physical aggression or violence
 - Involve some techniques that can be used to avoid the use of force
- **Goal of De-escalation**
 - Calm the situation
 - Prevent violence
 - Avoid the use of force
 - Promote problem-solving & cooperation

- De-escalation is NOT about giving in, avoiding or ignoring the issue, but rather about creating a safe & respectful environment for dialogue & resolution

Force Continuum

- ✓ **5 Levels in the Use of Force**
 - ✓ Level-1: Officer's Presence
 - ✓ Level-2: Verbal Response (Oral Command)
 - ✓ Level-3: Empty-Hand Techniques (Physical Restraint)
 - ✓ Level-4: Less-Lethal Weaponry
 - ✓ Level-5: Lethal Force
- ✓ **The level of force varies based on the situation**

The Use of Force Continuum

The Use of Force Continuum is a guideline used by law enforcement and security personnel to determine the appropriate level of force in various situations. It is designed to escalate or de-escalate based on the behavior of the subject they are dealing with. Here's an outline of the typical Use of Force Continuum:

Presence (No Force)

- Definition: Simply being present as a law enforcement officer can have a deterrent effect on potential criminal behavior.
- Example: An officer standing nearby or arriving on the scene may prevent a situation from escalating without needing to take any further action.

Verbal Commands (Verbal Force)

- Definition: Giving clear and concise instructions to a subject to gain their compliance.
- Example: An officer saying, "Please step back," or "Put your hands where I can see them."

Empty-Hand Control (Physical Force - Low)

- Definition: Using physical techniques that do not involve weapons to control a subject. This includes basic restraining methods.
- Example: Grabbing, holding, or guiding a subject to maintain control.

Less-Lethal Methods (Physical Force - Intermediate)

- Definition: Using tools or techniques intended to incapacitate a subject without causing serious injury or death.
- Examples:

- Tasers: To temporarily disable a subject.
- Pepper Spray: To subdue a subject by causing temporary blindness and pain.
- Batons: To apply physical force with less risk of lethal outcomes.

Lethal Force (Highest Level of Force)

- Definition: Using force that is likely to cause serious injury or death. This is considered a last resort and is only justified in situations where there is an imminent threat to life.
- Example: Discharging a firearm when the officer or others are in immediate danger.

8. Write down the 4 basic principles on the use of force and firearms. What is the principle of accountability? Write down the individual responsibility and superior responsibility in the use of force and firearms.

4 basic principles on the use of force and firearms

The four basic principles on the use of force and firearms, particularly as outlined by international guidelines such as the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, are:

- **Legality:**

Force and firearms should only be used in accordance with the law. Law enforcement officials must adhere to national and international laws that regulate the use of force. This principle ensures that any action taken is legally justified.

- **Necessity:**

Force should only be used when absolutely necessary. This means that law enforcement officials should only resort to using force or firearms when there is no other viable option to achieve a legitimate law enforcement objective. The amount of force used must be the minimum necessary to achieve this objective.

- **Proportionality:**

The level of force used must be proportional to the threat or resistance faced. This principle ensures that the response is not excessive compared to the situation. For instance, deadly force should only be used if there is an imminent threat to life.

- **Accountability:**

Law enforcement officials must be accountable for their actions when using force or firearms. This includes proper reporting, investigation, and legal consequences if the use of force is unlawful. Accountability ensures transparency and helps prevent abuses of power.

These principles are designed to protect both the public and law enforcement officials, ensuring that force is used responsibly and only when truly necessary.

Principle of Accountability

Principles 6-8, 22-24, 26 of BPUFF

- **Prompt Reporting**
 - Use of force that causes death or injury to be reported promptly
- **Proper Investigation**
 - Any excessive or arbitrary use of force to be properly investigated
 - Punished as a criminal offence
 - Disciplinary measures
- **Individual & Supervisor's Responsibility**
 - Both the official involved & his supervisor be held responsible

Individual Responsibility in the Use of Force and Firearms:

- **Personal Accountability:**

Each individual law enforcement official is personally responsible for their actions when using force or firearms. They must act within the boundaries of the law and adhere to the principles of legality, necessity, and proportionality.

- **Decision-Making:**

Officials must make independent decisions based on the situation at hand. They cannot justify unlawful use of force by claiming they were following orders if those orders were clearly illegal.

- **Reporting Obligations:**

Individuals must accurately report any use of force or firearms, providing a clear and truthful account of the incident for accountability and review purposes.

- **Consequences for Misconduct:**

If an individual unlawfully uses force or firearms, they may face disciplinary action, criminal charges, or other legal consequences, depending on the severity of the misconduct.

Superior Responsibility in the Use of Force and Firearms:

- **Command Accountability:**

Superiors, such as commanders or senior officers, are responsible for the actions of their subordinates when it comes to the use of force and firearms. They must ensure that their teams are properly trained and that the use of force is lawful and justified.

- **Duty to Prevent and Punish:**

Superiors must take proactive steps to prevent unlawful use of force by their subordinates. If they become aware of any illegal use of force, they have a duty to take corrective action, which may include reporting the incident and ensuring that those responsible are held accountable.

- **Responsibility for Orders:**

Superiors who issue orders involving the use of force or firearms must ensure that these orders comply with the law. If they issue illegal orders or fail to intervene when they know that unlawful force is being used, they can be held responsible for those actions.

- **Liability for Negligence:**

Superiors can be held liable if they negligently allow or fail to prevent unlawful use of force by their subordinates, particularly if they had knowledge of potential abuses and did nothing to stop them.

These points emphasize that both individuals and their superiors have distinct responsibilities in ensuring that force and firearms are used lawfully and ethically.