Protesting is a Fundamental Right

GS-Paper-2 International organisation (PT-MAINS)

Recently, the United Nations (UN) Human Rights Committee has reaffirmed that protesting peacefully, online or in person, is a fundamental human right. This statement has come in the backdrop of increasing demonstrations over issues like political rights and racial justice.

UN Human Rights Committee: It is tasked with monitoring how countries implement the International Covenant on Civil and Political Rights (ICCPR) 1976, which under Article 21 guarantees the right to peaceful assembly.

Latest Interpretation of the Right to Peaceful Assembly

Fundamental Human Right for People: To gather to celebrate or to air grievances in public and in private spaces, outdoors, indoors and online is a fundamental human right.

Protesters: Everyone, including children, foreign nationals, women, migrant workers, asylum seekers and refugees, can exercise the right of peaceful assembly.

Protection: Protesters have the right to wear masks or hoods to cover their face and that Governments should not collect personal data to harass or intimidate participants.

Role of Journalists and Human Rights Observers: They have the right to monitor and document any assembly, including violent and unlawful ones.

Government Obligations: Governments could not prohibit protests by making “generalised references to public order or public safety, or an unspecified risk of potential violence”. Governments cannot block internet networks or close down any website because of their roles in organising or soliciting a peaceful assembly.

Significance

The Committee’s interpretation will be important guidance for judges in national and regional courts around the world, as it now forms part of what is known as ‘soft law’.

The interpretation is a form of legal advice (not mandatory) from the Committee that monitors the International Covenant on Civil and Political Rights (ICCPR) 1976.
Indian Scenario:

India is a state party to the International Covenant on Civil and Political Rights (ICCPR).

The right to protest, to publicly question and force the government to answer, is a fundamental political right of the people that flows directly from a democratic reading of Article 19 of the Constitution of India.

Article 19 (1) (a) states that all citizens shall have the right to freedom of speech and expression.

Article 19 (1) (b) states that all citizens shall have the right to assemble peaceably and without arms.

However, the State can impose reasonable restrictions on the exercise of right of assembly on two grounds, namely, sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned.

Further, Indian courts have reiterated that the right to protest is a fundamental right (Ramlila Maidan Incident v. Home Secretary, Union Of India & Ors. case -2012).

International Covenant on Civil and Political Rights

- The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights.
- The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights.
- The Bill influences the decisions and actions of Government, State and Non-State actors to make economic, social and cultural rights a top-priority in the formation and implementation of national, regional and international policy and law.
- The ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights, such as: the right to life and human dignity; equality before the law; freedom of speech, assembly, and association; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right family life and family unity; and minority rights.
- The Covenant compels governments to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.
The Covenant was adopted by the UN General Assembly in 1966 and came into force in 1976. 173 countries including India have ratified the Covenant.