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INTERNATIONAL HUMAN RIGHTS FRAMEWORK

UTTARAKHAND OPEN UNIVERSITY

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UNIT-1

The UN Charter and Human Rights Protection

1.1 INTRODUCTION

1.2 LEARNING OUTCOMES

1.3 HUMAN RIGHTS AND THE UN CHARTER

1.4 WHAT ARE HUMAN RIGHTS?

1.5 HUMAN RIGHTS IN THE UN CHARTER

1.6 OBLIGATIONS BY MEMBER NATIONS TO COMPLY WITH THE

HUMAN RIGHTS PROVISIONS IN THE UN CHARTER

1.7 CONCLUSION

1.8 Glossary

1.9 Suggested Readings

1.10 Short Answer Questions

1.11 Terminal Questions

1.1 INTRODUCTION

This module introduces readers to the concept of human rights, based on universality, inalienability, indivisibility, interdependence, equality and non-discrimination. It explores the provisions of the UN Charter that explicitly refer to human rights and the roles that they play in promoting international co-operation. Human rights are a concern in all parts of the world and it is important that we study the provisions in the UN Charter that seek to promote and protect these rights and bring about greater international collaboration.

1.2 LEARNING OUTCOMES

After completing this module, readers should know and understand:

- The context in which human rights provisions in the UN Charter must be read
- The concepts of universality, inalienability, indivisibility, equality and non-discrimination of human rights.
- The specific UN Charter articles that contain human rights provisions and the obligations of member states to comply with these provisions.

1.3 HUMAN RIGHTS AND THE UN CHARTER

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. Human Rights, since the inception of the United Nations, have been an important part of its purposes, ideals and functions. Human rights are mentioned as early as in the Preamble of the UN Charter of the United Nations, emphasizing that the UN Organization seeks “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 promote social progress and better standards of life in larger freedom”.

The Charter’s operative part contains six articles with explicit references to human rights, making the subject one of the central themes of the legal instrument. In 1948, the Universal Declaration of Human Rights brought human rights into the realm of international law. Since then, the Organization has diligently protected and promoted human rights through legal instruments and on-the-ground activities.

1.4 WHAT ARE HUMAN RIGHTS?

Human rights are rights inherent to all human beings, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

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Universal and inalienable

The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

All States have ratified at least one, and 80% of States have ratified four or more, of the core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality. Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

Interdependent and indivisible

All human rights are indivisible, whether they are civil and political rights, such as the right to life, equality before the law and freedom of expression; economic, social and cultural rights, such as the rights to work, social security and education, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and interdependent. The improvement of one right facilitates advancement of the others. Likewise, the deprivation of one right adversely affects the others.

Equal and non-discriminatory

Non-discrimination is a cross-cutting principle in international human rights law. The principle is present in all the major human rights treaties and provides the central theme of some of international human rights conventions such as the International Convention on the Elimination of all forms of racial discrimination and the Convention on the Elimination of All Forms of Discrimination against Women.

The principle applies to everyone in relation to all human rights and freedoms and it prohibits discrimination on the basis of a list of non-exhaustive categories such as sex, race, colour and so on. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”

Both Rights and Obligations

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.

1.5 HUMAN RIGHTS IN THE UN CHARTER

The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. Human Rights, since the inception of the United Nations, have been an important part of its purposes, ideals and functions. Human rights are mentioned as early as in the Preamble of the UN Charter of the United Nations, emphasizing that the UN Organization seeks “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 promote social progress and better standards of life in larger freedom”.

It has been noted by several commentators that the Charter is unsatisfactory as regards its human rights provisions, because it nowhere specifies these rights. For the representatives of the fifty governments who met in San Francisco in 1945 to write and sign the Charter, like the parliamentarians in the signatory states who ratified it - indeed, like most people in civilized countries - did share a common understanding of what were the most basic human rights, broadly defined. So nobody could say in good faith in San Francisco or in the United Nations that, as the Charter did not specify any human rights.

The Charter’s operative part contains six articles with explicit references to human rights, making the subject one of the central themes of the legal instrument. In 1948, the Universal Declaration of Human Rights brought human rights into the realm of international law. Since then, the Organization has diligently protected and promoted human rights through legal instruments and on-the-ground activities.

The provisions of promotion of human rights are present in article 1(3), part IX and article 76(c) of the UN Charter.

According to Article 1(3), one of the purposes of the United Nations is “to achieve international co-operation...in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

It is self-evident that the Organization is obliged to pursue and try to realize its purposes. At the San Francisco gathering the chairman of the United States delegation Secretary of State Edward Stettinius expressed the sense of the Conference when he stated that the purposes listed in Article 1 of the Charter "are binding on the Organization, its organs and its agencies, indicating the direction their activities should take and the limitations within which their activities should proceed.

Article 1(3) may be compared with a similar provision in Article 55:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Under Article 55(c), the United Nations is obliged to promote a certain end which is essentially identical with the end which, under Article 1(3), the Organization is obliged to promote and encourage by achieving international co-operation.⁷ In fact the two articles are more similar in

meaning than they may appear. On a superficial reading, the obligation imposed on the United Nations by Article 1(3) relates to the achievement of international co-operation for the purpose of promoting respect for human rights, whereas the obligation imposed by 55(c) relates directly to the promotion of this end itself.

These two articles may now be compared with Article 76, which states "the basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1." These objectives include:

- c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion

Objective (c) concerns the encouragement of a certain end which is identical with the end referred to in Article 1(3), and also is essentially identical with that in Article 55(c). By Article 76(c) the United Nations, under whose authority the trusteeship system functions, is obliged to encourage the realization of this end.

The weightage given to Human Rights by the Charter is high considering that there is a repetition of the aims and means to attain the aim in various articles of the Charter and the Preamble.

1.6 OBLIGATIONS BY MEMBER NATIONS TO COMPLY WITH THE HUMAN RIGHTS PROVISIONS IN THE UN CHARTER

Granted that the United Nations is obliged by its own Charter to pursue the purpose or objective of promoting and encouraging respect for human rights, what obligation does this fact impose on the Member States? A general kind of understanding of the matter may be achieved by considering certain provisions in Article 2 of the Charter. The article begins with the words: "The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles" - and proceeds to specify seven principles. In the present connection, the most significant of the principles are the following:

- (1) All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
- (2) All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter.
- (3) Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.

It may be argued that paragraph (2) merely affirms the Members' general obligation to fulfil their various obligations under the Charter - which is tautological and superfluous.⁸ However, it is important to point out that the principle expressed in the paragraph is linked to, and must be read in conjunction with, the introductory words which refer to the purposes of the United Nations. The underlying idea is that the United Nations' purposes, or rather the requirement and duty of the Organization to pursue them, imply for all the Members certain relevant obligations. What obligations? A general sort of answer is suggested by paragraph (5), namely: obligations in the form of giving assistance to whatever the Organization does in pursuit of its purposes. This must be taken to mean that Member States ought not only to refrain from obstructing the efforts of the Organization, but also to participate actively in these efforts. If

Member States merely refrained from being obstructive, but they never did anything positive in connection with the purposes of the Organization, nothing much would ever be achieved. It follows, then, that the obligation of the United Nations to make efforts to develop international co-operation for the purpose of promoting respect for human rights implies that all Member States have an obligation to participate actively in these efforts.

Nothing more specific can be established from a study of Article 2 about the Member States' human rights obligations, except a negative point contained in paragraph (7). According to this paragraph, the United Nations has no authority to undertake any action which constitutes an intervention in the domestic affairs of any state. In other words, the Organization is not permitted by its Charter - and therefore it is not obligated - to impose on any state, or compel it to accept, any arrangements in its internal administration or its relations to its own inhabitants, for whatever purpose. It was clearly understood by the authors of the Charter that whereas the United Nations and its Members should assume obligations for the promotion of respect for human rights, the actual observance of human rights was primarily the concern of each state.

1.7 CONCLUSION

In summary, the UN Charter imposes on the United Nations the obligation to initiate international co-operation, and on the Member States the obligation to participate actively and in good faith in such co-operation, for the purpose of promoting respect for human rights and fundamental freedoms for all, by bringing about the adoption of suitable legislative and administrative measures in all independent states and dependent territories. Indeed, the whole United Nations system may be seen as a framework of organs, agencies and other formal institutions, operating under international law, for the achievement of international co-operation in pursuit of the various purposes of the Organization. Co-operation for the promotion of human rights, carried out through the appropriate organs - basically the General Assembly and ECOSOC together with the Human Rights Council - may take a variety of forms, which must always be consistent with the principle of non-intervention in the domestic affairs of any state. Among permissible forms of co-operation are:

(A) Conduct studies and investigations, writing reports, holding debates on human rights problems, and in due course preparing recommendations and draft conventions embodying measures for the protection of human rights.

Exercise as effectively as possible the moral authority of the Organization with a view to persuading or inducing all states to accept the recommendations and ratify the conventions.

1.8 Glossary

1. **United Nations Charter** – The founding treaty of the United Nations, signed in 1945, which establishes the purposes, principles, and structure of the UN.
2. **Human Rights** – Fundamental rights and freedoms inherent to all human beings without discrimination.
3. **UN General Assembly** – The principal deliberative organ of the United Nations, responsible for discussing and promoting international cooperation, including human rights.

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4. **Economic and Social Council (ECOSOC)** – A principal organ of the UN that coordinates economic, social, and human rights activities.
5. **Human Rights Council** – The intergovernmental body responsible for promoting and protecting human rights worldwide.
6. **Office of the United Nations High Commissioner for Human Rights (OHCHR)** – The principal UN office responsible for promoting and protecting human rights globally.
7. **International Cooperation** – Joint efforts by States to achieve common objectives, including the promotion of human rights.
8. **Fundamental Freedoms** – Essential liberties such as freedom of expression, religion, association, and movement recognized under international human rights law.

1.9 Suggested Readings

1. United Nations, *Charter of the United Nations*, 1945.
2. United Nations, *Universal Declaration of Human Rights*, 1948.
3. Malcolm N. Shaw, *International Law*, Cambridge University Press.
4. Rhona K. M. Smith, *Textbook on International Human Rights*, Oxford University Press.
5. H.O. Agarwal, *Human Rights*, Central Law Publications.

1.10 Short Answer Questions

1. What are the objectives of the United Nations Charter regarding human rights?
2. Mention the provisions of the UN Charter relating to human rights.
3. What is the role of the UN General Assembly in the promotion of human rights?
4. Explain the functions of ECOSOC in the field of human rights.
5. What are the functions of the Human Rights Council?

1.11 Terminal Questions

1. Discuss the significance of the United Nations Charter in the development of international human rights law.
2. Examine the provisions of the UN Charter relating to the promotion and protection of human rights.
3. Analyze the role of the principal organs of the United Nations in the protection of human rights.
4. Critically evaluate the effectiveness of the United Nations Charter as an instrument for the protection of human rights.
5. Explain the relationship between the UN Charter and the Universal Declaration of Human Rights in the evolution of the international human rights framework.

UNIT-2

The UDHR and Global Human Rights Standards

2.1 INTRODUCTION

2.1.1 AIMS AND OBJECTIVES

2.2 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

2.2.1 PROVISIONS OF THE UNIVERSAL DECLARATION

2.2.2 SIGNIFICANCE OF THE UNIVERSAL DECLARATION

2.3 THE INTERNATIONAL COVENANT ON CIVIL AND

POLITICAL RIGHTS (ICCPR)

2.3.1 PROVISIONS OF THE ICCPR

2.3.2 IMPLEMENTATION OF THE ICCPR

2.4 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL

AND CULTURAL RIGHTS (ICESCR)

2.5 THE SIGNIFICANCE OF THE INTERNATIONAL BILL OF

HUMAN RIGHTS

2.6 SUMMARY

2.7 TERMINAL QUESTIONS

2.8 SUGGESTED READINGS

2.1 INTRODUCTION

Human rights has been one of the main areas of work to which the United Nations has consistently devoted its time and efforts. When the Second World War came to an end, fundamental human rights were perceived as a prerequisite for international peace and friendly relations among nations. The United Nations has been concerned with the universal respect for, and observance of, human rights since its inception in 1947. Its beginnings were pronounced in the UN Charter where the phrase ‘human rights and fundamental freedoms’ were repeatedly mentioned. The Charter also provided for the establishment of a subsidiary body under the Economic and Social Council for the promotion and protection of human rights. That subsidiary body came to be known as the Commission on Human Rights (now replaced by Human Rights Council). It is the Commission that took up the task of drafting a human rights document for the possible adoption by the General Assembly. Soon after, the Universal Declaration of Human Rights (UDHR) was adopted in 1948, which was intended to prevent the kind of atrocities that Nazis had committed during the Second World War. The UDHR championed almost all the fundamental rights of the individual; it was hailed as ‘the Magna Carta of Mankind’ by its chief architect, Eleanor Roosevelt.¹

The Universal Declaration of Human Rights did not create any binding obligations for the member states of the United Nations. Hence, the UN Commission on Human Rights immediately took up the task of drafting a binding international treaty of Human Rights. However, that proposed treaty was divided into two separate Covenants – International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Two Optional Protocols to ICCPR, one on individuals’ right to petition and the other on the abolition of death penalty, were adopted in 1966 and 1991 respectively. The drafting of the Covenants and the First Optional Protocol (to the ICCPR) took 18 years. They are the most comprehensive and basic human rights treaties ever prepared by the international community. They contain almost all the basic rights of the individual – civil, political, economic, social and cultural rights – and provide measures for their implementation. These five human rights instruments are known as the “International Bill of Human Rights”. This unit will also discuss the two bodies (Committees) that have been created as part of the monitoring framework of the two Covenants.²

2.2 AIMS AND OBJECTIVES

This Unit will help you to understand

- The importance of United Nations’ contribution in the field of human rights; the provisions and significance of the Universal Declaration;
- The features, provisions and implementation of the two Covenants; and
- The similarities, differences and interdependence between the two Covenants;
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¹ <https://egyankosh.ac.in/bitstream/123456789/63525/2/Unit-7.pdf> accessed on 15/08/2024.

² *Ibid.*

2.2 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is a document that acts like a global road map for freedom and equality protecting the rights of every individual, everywhere. It was the first time countries agreed on the freedoms and rights that deserve universal protection in order for every individual to live their lives freely, equally and in dignity. The UDHR was adopted by the newly established United Nations on 10 December 1948, in response to the “barbarous acts which outraged the conscience of mankind” during the Second World War. Its adoption recognized human rights to be the foundation for freedom, justice and peace.³

Work on the UDHR began in 1946, with a drafting committee composed of representatives of a wide variety of countries, including the USA, Lebanon and China. The drafting committee was later enlarged to include representatives of Australia, Chile, France, the Soviet Union and the United Kingdom, allowing the document to benefit from contributions of states from all regions, and their diverse religious, political and cultural contexts. The UDHR was then discussed by all members of the UN Commission on Human Rights and finally adopted by the General Assembly in 1948. The Declaration outlines 30 rights and freedoms that belong to all of us and that nobody can take away from us. The rights that were included continue to form the basis for international human rights law.⁴

2.2.1 PROVISIONS OF THE UNIVERSAL DECLARATION

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full

³ <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>

⁴ *Ibid.*

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realization of this pledge. Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

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

Article 2

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

Article 3

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

Article 4

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

Article 5

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

Article 6

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

Article 7

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

Article 8

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

Article 9

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

Article 10

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

Article 11

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

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

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1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

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

Article 19

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

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

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

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

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

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

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

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the

rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

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

Article 30

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

2.2.2 SIGNIFICANCE OF THE UNIVERSAL DECLARATION

The UDHR marked the first time that the rights of individuals were consolidated in one document. Pope John Paul II alluded to the UDHR as “*one of the highest expressions of the human conscience of our time*”. Robinson advances that the UDHR “*exerts a moral, political and legal influence far beyond the hopes of many of its drafters*”. Its birth disseminated a notion that HR apply to everyone, everywhere. The UDHR has been signed by copious States and according to Hurst, by virtue of its intercontinental approval; the UDHR has acquired the status of customary international law (CIL). This position is strong, but disintegrates when considering the HR abuses that have occurred, which will be examined shortly. Principally, the UDHR has brought rights to the fore and attributed them with the status and respect they deserve. It is indeed, as Eleanor Roosevelt put it, the “*international Magna Carta for all mankind*”.⁵

Since the Declaration’s adoption, there has still been war, famine and dictatorships. Does this dynamic therefore undermine the importance of the UDHR in protecting HR and thus, point to its failure? It can be opined that this is not the case. By virtue of mankind’s flawed state and its proclivity to subscribe to evil, the UDHR’s importance is unequivocal. As man is fallible, it would be erroneous to blame the UDHR when rights are violated. Man’s greed for power, which has ushered in dictatorships, is one of the many examples where man, by choice, ignores the right course of conduct. The UDHR is still important in protecting HR because it serves as a standard that mankind can aspire to. Furthermore, it can be suggested that the UDHR is a guiding force, in helping humanity “act towards one another in a spirit of brotherhood”.⁶

2.3 THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The ICCPR is a multilateral treaty adopted by the United Nations on December 16, 1966, and came into force on March 23, 1976. The Covenant commits parties to respect the civil and political rights of individuals, which includes, right to freedom of speech and expression, right

⁵ <https://peachyessay.com/sample-essay/importance-universal-declaration-human-rights-udhr-protecting-human-rights/> accessed on 17/08/2024.

⁶ *bid.*

to freedom of religion, Freedom of assembly, electoral rights, due process and a fair trial. As of 2019 the treaty has 173 parties and six signatories that are yet to ratify.⁷

The international human rights movement was strengthened when the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948, this combined with the ICCPR and the ICESCR form the International Bill of Human Rights. The major objective of these Covenants is to ensure that each person is guaranteed these rights without any discrimination.⁸

2.3.1 PROVISIONS OF THE ICCPR

Article 6- Right to life.

Article 7– Freedom from torture.

Article 8– Right to not been slaved.

Article 9- Right to liberty and security of the person.

Article 10- Rights of detainees.

Article 11- Right to not be imprisoned merely on the ground of inability to fulfil a contractual obligation

Article 12- Freedom of movement and choice of residence for lawful residents.

Article 13- Rights of aliens.

Article 14– Equality before the courts and tribunals. Right to a fair trial.

Article 15– No one can be guilty of an act of a criminal offence which did not constitute a criminal offence.

Article 16–Right to recognition as a person before the law.

Article 17–Freedom from arbitrary or unlawful interference.

Article 18–Right to freedom of thought, conscience and religion.

Article 19–Right to hold opinions without interference.

Article 20–Propaganda for war shall be prohibited by law.

Article 21–Right of peaceful assembly

Article 22–Right to freedom of association with others.

Article 23–Right to marry.

Article 24–Children’s rights

Article 25–Right to political participation.

⁷ <https://blog.ipleaders.in/critical-analysis-covenants-1966/> accessed on 17/08/2024.

⁸ *Ibid.*

Article 26–Equality before the law.

Article 27 – Minority protection.

2.3.2 IMPLEMENTATION OF THE ICCPR

In the process towards full implementation of ICCPR, efforts of State parties are supported by the monitoring body of ICCPR, the UN Human Rights Committee (HR Committee), which consists of 18 independent experts nominated and elected by State parties to ICCPR. As one of its main functions, the HR Committee reviews situation of implementation in State parties through constructive dialogue and give expert recommendations to the State concerned.⁹

In this context and as the obligation under ICCPR, State parties are required to submit a report to the HR Committee, one year after the Covenant entered into force (15 months after the ratification), for the initial review by the Committee (ICCPR Article 40).² Thereafter State parties are requested to submit periodic reports at intervals specified by the HR Committee for the following cycles of review (between three and seven years). These State reports should detail the measures taken by the State concerned to implement the Covenant. Based on the information provided by the State party and other stakeholders as well as through interactive dialogue with the State representatives, the HR Committee will issue recommendations to the State concerned for effective implementation of the Covenant. Experience shows that many State parties have benefited from the expert advices from the HR Committee as well as assistance from other stakeholders at different levels.¹⁰

2.4 THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

It is now clear that the ICCPR evolved from the initial provisions in the Universal Declaration. While the Western countries tirelessly championed for the protection and promotion of the civil-political rights, pressure was building from the Soviet bloc for the endorsement of socio-economic rights on the same lines as the civil-political rights. The other part of the Universal Declaration (Articles 22-29) on the socio-economic-cultural rights was expanded to form the International Covenant on Economic, Social and Cultural Rights (ICESCR). The two Covenants were originally destined to be part of the same binding treaty but they were eventually bifurcated into two separate documents owing to differences in the nature of the two sets of rights, ideological positions, and the implementation mechanism envisaged for them. Like ICCPR, the General Assembly has adopted an Optional Protocol to the ICESCR in 2008 that makes individual communications procedure available for the non-fulfilment of socio-economic and cultural rights. However, this optional procedure has not entered into force yet. With the adoption of the OP on individual communications, the distinction between ICCPR and ICESCR in terms of their primacy and implementation has become less relevant.¹¹

⁹https://academy.ishr.ch/upload/resources_and_tools/CCPR%20Centre%20guide%20for%20ratification%20and%20implementation_en.pdf accessed on 17/08/2024.

¹⁰ *Ibid.*

¹¹ *Id.*

2.5 THE SIGNIFICANCE OF INTERNATIONAL BILL OF HUMAN RIGHTS

The late Secretary-General of the United Nations, U. Thant, stressed the importance of the adoption of the International Covenants, on 16 December 1966, by the following inspired words:

Today's decisions are the culmination and the outcome of sustained and complex preparatory work to which the United Nations has devoted itself since 1947. It was then decided that human rights and fundamental freedoms which had been referred to in general terms in the Charter and which were soon to be proclaimed "standards of achievement" in the Universal Declaration of Human Rights must be made the subject matter of legally binding obligations in international treaties... in the philosophy of the United Nations, respect for human rights is one of the main foundations of freedom, justice and peace in the world.... (Vijapur and Savitri, p. 139)

With the adoption of these Covenants in 1966 and other relevant instruments, it can be said that a solid legal foundation of human rights law has now been laid down for application at all levels of society: local, national and international. The International Covenants and the two Optional Protocols constitute a positive, effective and realistic step towards the international protection of the individual. Both the Covenants entered into force in early 1976 – almost a decade after their adoption. It was only these two Covenants that took so long to get the minimum ratifications required to become operational; this could be due to the nature of the obligations contained in them which were broad and intended to restrict the sanctity of state sovereignty. It is encouraging to note that more and more states are ratifying these Covenants in recent years. Until May 2010, the ICCPR has been ratified by 165 States and the ICESCR by 160 States, whereas the First and Second Optional Protocols have been ratified by 113 and 72 States respectively. India has ratified both the Covenants on 10 April 1979, but it has not ratified either of the Optional Protocols.¹²

2.6 SUMMARY

In this Unit we have seen how the Universal Declaration of Human Rights became the starting point for UN action and treaty-making in the field of human rights. Since the Universal Declaration was not a binding treaty, many Covenants and Conventions were later adopted by the United Nations to give effect to the promotion and protection of human rights. The Universal Declaration also acts as an elucidation of and commitment towards the human rights provisions seen in the UN Charter. The Declaration has grown in stature and importance over a period of time and has been a philosophical cornerstone and anchor of the universal, regional and national action in the field of human rights.

As a logical step thereafter, the two Covenants have subsumed the essential provisions of the Universal Declaration and have set the ball of UN human rights treaties rolling. Both the Covenants have implementation procedures in the form of committees as we have seen above.

¹²

Id.

The distinction in language and implementation of the two Covenants is no longer held to be tenable by the principle that both are interdependent and in some sense reinforcing in their essence. The Universal Declaration, the two Covenants together with their Optional Protocols is known as the International Bill of Human Rights.

2.7 TERMINAL QUESTIONS

1. Discuss the provisions and significance of the Universal Declaration of Human Rights.
2. Bring out the fundamental differences between the UDHR and the Covenants.
3. Critically examine the implementation mechanisms of the UN Covenants on Human Rights.
4. Explain the interdependence between the ICCPR and ICESCR.
5. What is the importance of the International Bill of Human Rights?

2.8 SUGGESTED READINGS

1. Hannum, Hurst., 'The Universal Declaration of Human Rights' in Rhona Smith and Christien van der Anker, ed., *Human Rights*, (Hodder Arnold, 2004), pp. 351-353. Freeman, Michael., *Human Rights – An Interdisciplinary Approach*, Polity: London, 2002
2. Lauren, Paul Gordon., *The Evolution of International Human Rights: Visions Seen*, second edition, University of Pennsylvania Press, Philadelphia, PA, 2003
3. Robinson, Mary., "The Universal Declaration of Human Rights: A Living Document", *Australian Journal of International Affairs*, vol. 52, no. 2, 1998.
4. *UN Briefing Papers – Human Rights Today*, United Nations, New York, 1998
5. Vijapur, Abdulrahim P, and K. Savitri., 'The International Bill of Human Rights', in Shashi Motilal and Bijayalaxmi Nanda, (eds.), *Understanding Social Inequality – Concerns of Human Rights, Gender and Environment*, Macmillan Publishers India Ltd., New Delhi, 2010, pp. 131-149.

UNIT 3

**ICCPR AND INTERNATIONAL HUMAN RIGHTS
OBLIGATIONS**

3.1 INTRODUCTION

3.2 OBJECTIVES

3.3 SUBJECT

**3.3.1 OVERVIEW OF THE INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS**

**3.3.2 SIGNIFICANT EVENTS RELATED TO THE
INTERNATIONAL COVENANT ON CIVIL AND
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**3.3.2.1 1948: ADOPTION OF THE UNIVERSAL DECLARATION
OF HUMAN RIGHTS (UDHR)**

3.3.2.2 1954: DRAFTING OF THE ICCPR

**3.3.2.3 1966: ADOPTION OF THE ICCPR BY THE UNITED
NATIONS GENERAL ASSEMBLY**

**3.3.2.4 1967: OPENING FOR SIGNATURE, RATIFICATION, AND
ACCESSION**

3.3.2.5 1976: ENTRY INTO FORCE OF THE ICCPR

**3.3.2.6 1989: ADOPTION OF THE SECOND OPTIONAL
PROTOCOL TO THE ICCPR**

3.3.2.7 1993: WORLD CONFERENCE ON HUMAN RIGHTS

**3.3.2.8 1997: 50TH RATIFICATION OF THE SECOND OPTIONAL
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**3.3.2.9 2006: HUMAN RIGHTS COUNCIL REPLACES THE
COMMISSION ON HUMAN RIGHTS**

3.3.2.10 2016: 50TH ANNIVERSARY OF THE ICCPR

3.3.2.11 2023: CONTINUED IMPLEMENTATION AND

MONITORING

3.3.3 INDIA'S APPROACH TOWARDS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

3.3.4 GEOPOLITICAL INFLUENCE OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

3.4 SUMMARY

3.5 GLOSSARY

3.6 SAQS

3.7 REFERENCES

3.8 SUGGESTED READINGS

3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

3.1 INTRODUCTION

The International Covenant on Civil and Political Rights (ICCPR) is a key international treaty adopted by the United Nations General Assembly in 1966 and came into force on March 23, 1976. It is one of the core human rights treaties within the international human rights system and is considered a cornerstone of international human rights law. The ICCPR outlines a broad range of civil and political rights and establishes mechanisms to monitor and ensure compliance by its signatories.

It is one of the most widely ratified international human rights treaties. The ICCPR together with the International Covenant on Economic, Social, and Cultural Rights (ICESCR) forms the International Bill of Human Rights. These covenants are foundational documents for international human rights law and set the standards for civil, political, economic, social, and cultural rights globally.

3.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- What is the International Covenant on Civil and Political Rights?
- The objective of the International Covenant on Civil and Political Rights
- Adoption of the Universal Declaration of Human Rights (UDHR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Bill of Human Rights
- First Optional Protocol
- Second Optional Protocol to the ICCPR
- Vienna Declaration and Program of Action
- The United Nations Human Rights Council
- India's approach towards International Covenant on Civil and Political Rights

- Geopolitical Influence of the International Covenant on Civil and Political Rights

3.3 SUBJECT

3.3.1 Overview of the International Covenant on Civil and Political Rights

There are VI parts in ICCPR and 53 articles in total. The preamble of the International Covenant on Civil and Political Rights (ICCPR) sets the context and underlying principles for the treaty. It reaffirms the belief that the rights recognized in the ICCPR derive from the inherent dignity of the human person. It emphasizes the importance of these rights for the development of free and democratic societies, and it acknowledges that the enjoyment of civil and political freedoms and the absence of fear and want can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights, as well as their economic, social, and cultural rights.

The preamble also notes the obligation of states under the United Nations Charter to promote universal respect for, and observance of, human rights and freedoms. It recalls that the Universal Declaration of Human Rights (UDHR) envisages the recognition and observance of these rights, and it highlights the need to take further steps to ensure their enjoyment through binding international agreements like the ICCPR.

Here we give a brief article-wise overview of the International Covenant on Civil and Political Rights (ICCPR):

Part I: Self-Determination

Article 1

Right to Self-Determination: All peoples have the right to freely determine their political status and pursue their economic, social, and cultural development. They may freely dispose of their natural resources, and states are obligated to promote and respect this right.

Part II: General Obligations

Article 2

State Obligations: States must respect and ensure all rights in the Covenant without discrimination. They must adopt laws and other measures to effect these rights and provide remedies for violations.

Article 3

Gender Equality: States must ensure the equal rights of men and women to enjoy all civil and political rights.

Article 4

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Derogation in Emergencies: States may derogate from certain obligations during public emergencies that threaten the life of the nation, provided such measures are not discriminatory or inconsistent with other international obligations.

Article 5

No Destruction of Rights: The Covenant's provisions must not be interpreted to permit any destruction of the rights and freedoms recognized.

Part III: Specific Rights

Article 6

Right to Life: The right to life is inherent and must be protected by law. The death penalty, if not abolished, is restricted to the most serious crimes.

Article 7

Prohibition of Torture: No one shall be subjected to torture, cruel, inhuman, or degrading treatment or punishment.

Article 8

Prohibition of Slavery: Slavery, servitude, and forced or compulsory labour are prohibited.

Article 9

Right to Liberty and Security: Individuals have the right to liberty and security, and no one shall be arbitrarily arrested or detained.

Article 10

Treatment of Detainees: All persons deprived of their liberty shall be treated with humanity and respect for their dignity.

Article 11

Prohibition of Imprisonment for Debt: No one shall be imprisoned solely on the ground of inability to fulfil a contractual obligation.

Article 12

Freedom of Movement: Everyone has the right to freedom of movement and residence within their state, and the right to leave any country, including their own.

Article 13

Protection of Aliens: Aliens lawfully present in a state can only be expelled following due process.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Article 14

Right to a Fair Trial: Everyone is entitled to a fair and public hearing by a competent, independent, and impartial tribunal. This includes the presumption of innocence and the right to legal representation.

Article 15

Legality in Criminal Law: No one shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence at the time it was committed.

Article 16

Recognition as a Person before the Law: Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

Right to Privacy: No one shall be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence.

Article 18

Freedom of Thought, Conscience, and Religion: Everyone has the right to freedom of thought, conscience, and religion, including the freedom to change one's religion or belief.

Article 19

Freedom of Opinion and Expression: Everyone has the right to hold opinions without interference and to seek, receive, and impart information and ideas.

Article 20

Prohibition of Propaganda for War and Incitement: Any propaganda for war and advocacy of national, racial, or religious hatred is prohibited.

Article 21:

Right to Peaceful Assembly: The right to peaceful assembly is recognized.

Article 22

Freedom of Association: Everyone has the right to freedom of association, including the right to form and join trade unions.

Article 23

Protection of the Family: The family is recognized as the natural and fundamental group unit of society, entitled to protection by society and the state.

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Article 24

Rights of the Child: Every child has the right to protection by their family, society, and the state, including the right to acquire a nationality.

Article 25

Political Participation: Every citizen has the right to participate in public affairs, vote, and be elected in genuine periodic elections.

Article 26

Equality before the Law: All persons are equal before the law and are entitled to equal protection without discrimination.

Article 27

Rights of Minorities: Persons belonging to ethnic, religious, or linguistic minorities have the right to enjoy their own culture, profess and practice their religion, and use their language.

Part IV: Human Rights Committee

Articles 28-45:

These articles establish the Human Rights Committee, detailing its composition, functions, and procedures. The Committee monitors state parties' implementation of the ICCPR through reports, communications, and general comments.¹³

Part V: Interpretation and Application

Articles 46-47

These articles clarify the relationship between the ICCPR and the UN Charter and confirm that nothing in the ICCPR should be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural resources.

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

¹³ For detail see <http://www2.ohchr.org/english/law/index.htm> or the International Covenant on Civil and Political Rights

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Part VI: Ratification, Entry into Force, and Amendments

Articles 48-53

These articles cover the technical aspects of the Covenant, including its ratification, entry into force, amendments, and the official languages of the ICCPR.

Hence we see that the ICCPR is a comprehensive treaty that establishes a wide range of civil and political rights. It obligates states to respect these rights and sets up a monitoring body, the Human Rights Committee, to ensure compliance. The Covenant is a foundational document in international human rights law, promoting the protection of individual freedoms worldwide.

3.3.2 SIGNIFICANT EVENTS RELATED TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) is a key international treaty that outlines the civil and political rights of individuals. Here is a chronology of significant events related to the ICCPR:

3.3.2.1 1948: ADOPTION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

The United Nations General Assembly adopted the UDHR on December 10, 1948. The declaration laid the foundation for international human rights law, including civil and political rights. December 10, is also celebrated every year as Human Rights Day. It remains a powerful symbol of the global commitment to ensuring that every person enjoys the basic rights and freedoms that are necessary for a life of dignity and respect.

Key Features of the UDHR: Here is a summary of the Universal Declaration of Human Rights

1. Preamble:

The UDHR begins with a preamble that recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world.

2. Universal Rights:

The Declaration consists of 30 articles, which outline a wide range of human rights and freedoms to which all people are entitled, regardless of nationality, ethnicity, religion, gender, or any other status.

3. Civil and Political Rights:

The UDHR guarantees fundamental civil and political rights, such as:

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- Right to life, liberty, and security (*Article 3*)
- Freedom from slavery and servitude (*Article 4*)
- Freedom from torture or cruel, inhuman, or degrading treatment (*Article 5*)
- Right to recognition as a person before the law (*Article 6*)
- Right to a fair trial (*Article 10*)
- Freedom of thought, conscience, and religion (*Article 18*)
- Freedom of opinion and expression (*Article 19*)
- Right to peaceful assembly and association (*Article 20*)

4. Economic, Social, and Cultural Rights:

The UDHR also covers economic, social, and cultural rights, including:

- Right to work, to free choice of employment, and just and favourable conditions of work (*Article 23*)
- Right to social security (*Article 22*)
- Right to an adequate standard of living, including food, clothing, housing, and medical care (*Article 25*)
- Right to education (*Article 26*)
- Right to participate in the cultural life of the community (*Article 27*)

5. Equality and Non-Discrimination:

The UDHR emphasizes that all human beings are born free and equal in dignity and rights (*Article 1*) and are entitled to all the rights and freedoms outlined in the Declaration without discrimination of any kind (*Article 2*).

6. Right to Asylum:

It recognizes the right to seek asylum from persecution in other countries (*Article 14*).

7. Democratic Rights:

The UDHR upholds the right to take part in government, directly or through freely chosen representatives, and the right to free and fair elections (*Article 21*).

8. Rights to a Family and Personal Life:

It protects the family as the natural and fundamental group unit of society (*Article 16*) and safeguards the right to privacy (*Article 12*).

Significance:

1. Moral and Legal Influence:

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The UDHR is not a legally binding document, but it has had a profound impact on international law and national constitutions. It has inspired a wide range of international treaties, conventions, and domestic laws that protect human rights.

2. Global Recognition:

The UDHR has been translated into over 500 languages, making it one of the most widely recognized and influential documents in the world.

3. Foundation for Human Rights Movements:

The Declaration has served as a foundation for numerous human rights movements and organizations around the globe, championing the cause of human dignity and freedom.

3.3.2.2 1954: DRAFTING OF THE ICCPR

The idea of creating an international bill of rights emerged after World War II, particularly in response to the atrocities committed during the war. The international community sought to establish legal frameworks to protect human rights universally. The drafting process for the ICCPR began shortly after the adoption of the UDHR. The United Nations Commission on Human Rights (now the Human Rights Council) played a central role in drafting the Covenant. The UN Commission on Human Rights, chaired by Eleanor Roosevelt, was instrumental in drafting the UDHR. After the adoption of the UDHR, the Commission focused on creating binding treaties that would cover both civil and political rights and economic, social, and cultural rights. The drafting of the ICCPR began in the early 1950s. The Commission decided to draft two separate covenants: one on civil and political rights (ICCPR) and another on economic, social, and cultural rights (ICESCR). This decision was due to the differing nature and perceived implementation challenges of these two sets of rights. The final text of the ICCPR was completed in 1966. Unlike the UDHR, the ICCPR is legally binding on the states that have ratified it. It obligates them to respect and ensure the civil and political rights of individuals within their jurisdiction. The Covenant established the Human Rights Committee, which monitors the implementation of the ICCPR by its State parties.

3.3.2.3 1966: ADOPTION OF THE ICCPR BY THE UNITED NATIONS GENERAL ASSEMBLY

On December 16, 1966, the United Nations General Assembly adopted the ICCPR, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR, along with the UDHR and ICESCR, forms what is known as the International Bill of Human Rights, providing a comprehensive framework for the protection and promotion of human rights globally.

Alongside the ICCPR, an Optional Protocol was adopted, which allows individuals to submit complaints about violations of their rights under the Covenant to the UN Human Rights Committee.

A Second Optional Protocol was later adopted in 1989, aiming at the abolition of the death penalty.

3.3.2.4 1967: OPENING FOR SIGNATURE, RATIFICATION, AND ACCESSION

Signature

The ICCPR was opened for signature on December 19, 1966. Many countries signed the treaty shortly after it was opened for signature, demonstrating their commitment to upholding civil and political rights.

When a country signs the ICCPR, it indicates its preliminary endorsement of the treaty and its intention to consider ratification. However, signing the covenant does not make the treaty legally binding on the country.

Upon signing, a country is obligated to refrain from acts that would defeat the object and purpose of the treaty, even if it has not yet ratified it.

Ratification

Ratification is the process by which a country formally consents to be bound by the treaty after signing it. This involves a domestic approval process, which typically includes legislative approval.

Once a country ratifies the ICCPR, it is legally bound to implement the provisions of the treaty and is subject to international scrutiny regarding its compliance.

For example, the United States signed the ICCPR on October 5, 1977, signaling its intention to join the treaty and ratified it on June 8, 1992, meaning it became legally bound by the treaty from that date forward.

The ICCPR entered into force on March 23, 1976, after 35 countries had ratified the treaty. States that ratify the ICCPR must report periodically to the UN Human Rights Committee on how they are implementing the rights guaranteed by the treaty.

Accession:

Accession is the process by which a country becomes a party to the ICCPR without having previously signed it. Accession has the same legal effect as ratification.

A country that accedes to the ICCPR is fully bound by the treaty's provisions, just as if it had signed and ratified the treaty.

Countries that did not sign the ICCPR before it was closed for signature can still become parties by acceding to it. Accession usually occurs when a country wishes to join the treaty system after the initial signing period has passed.

Many countries, such as China, acceded to the ICCPR without having signed it, choosing to become parties to the treaty at a later stage.

3.3.2.5 1976: ENTRY INTO FORCE OF THE ICCPR

The ICCPR entered into force on March 23, 1976, after it had been ratified by 35 states, as required by the Covenant. As of 2024, the ICCPR has 173 state parties, which include countries that have ratified or acceded to the treaty.

3.3.2.6 1989: ADOPTION OF THE SECOND OPTIONAL PROTOCOL TO THE ICCPR

The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) is a significant international treaty aimed at the abolition of the death penalty. The Protocol entered into force on July 11, 1991, after the 10th ratification.

Overview of the Second Optional Protocol:

Adoption: The Second Optional Protocol was adopted by the United Nations General Assembly on December 15, 1989.

Objective: The primary goal of the Second Optional Protocol is to abolish the death penalty worldwide. It requires the signatory states to commit to the abolition of the death penalty within their jurisdictions.

Key Provisions:

Article 1 states that, no one within the jurisdiction of a signatory state shall be executed. The state must take all necessary measures to abolish the death penalty.

According to *Article 2*, states are allowed to make a reservation at the time of ratification or accession, allowing for the use of the death penalty in wartime for serious military crimes.

Article 3 obliges the states to report on measures taken to give effect to the Protocol in their periodic reports submitted under the ICCPR.

Global Adoption:

As of today, numerous countries have ratified or acceded to the Second Optional Protocol, committing themselves to abolishing the death penalty. However, many countries, including those that retain the death penalty in their legal systems, have not ratified the protocol.

India's Position

India has not ratified the Second Optional Protocol. While the death penalty is still a legal form of punishment in India, it is reserved for the "rarest of rare" cases, according to a legal doctrine established by the Supreme Court of India.

Significance

The Second Optional Protocol is a critical instrument in the global movement towards the abolition of the death penalty. It reflects a growing international consensus that the death penalty is incompatible with human dignity and human rights.

Challenges

The abolition of the death penalty remains a contentious issue globally, with varying opinions and practices across different legal systems and cultures. The Protocol represents a key effort to unify international human rights standards on this issue.

3.3.2.7 1993: WORLD CONFERENCE ON HUMAN RIGHTS

The conference was held from June 14 to 25, 1993, in Vienna, Austria. The United Nations organized it. The main objective of the conference was to assess the state of human rights around the world and to develop a common international understanding and plan for advancing human rights in the post-Cold War era.

The most significant outcome of the conference was the adoption of the Vienna Declaration and Programme of Action on June 25, 1993. This document reaffirmed the universality, indivisibility, and interdependence of all human rights. It reinforced the idea that human rights should be protected regardless of the political, economic, and cultural systems of a state.

One of the most significant outcomes was the establishment of the Office of the High Commissioner for Human Rights (OHCHR). This office was created to promote and protect human rights globally, to act as the UN's principal human rights official, and to coordinate the UN's human rights activities. The conference placed special emphasis on the rights of women, recognizing gender-based violence as a human rights issue and calling for the elimination of violence against women.

The conference also highlighted the rights of indigenous peoples, acknowledging their unique cultural and social needs. This led to further initiatives to protect and promote the rights of indigenous peoples globally.

The Vienna Declaration and Programme of Action continue to serve as a foundational document for the work of the United Nations and other international bodies in the field of human rights.

3.3.2.8 1997: 50TH RATIFICATION OF THE SECOND OPTIONAL PROTOCOL

By 1997, 50 countries had ratified the Second Optional Protocol to the ICCPR, furthering the global movement towards the abolition of the death penalty. The 50th ratification of the Second Optional Protocol marked a major step forward in the international movement against the death penalty. It demonstrated growing global consensus and commitment to ending capital punishment.

The country that achieved the 50th ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was Rwanda. Rwanda ratified the protocol on June 15, 2008, marking an important milestone in the global movement towards

the abolition of the death penalty. However, it's important to clarify that while Rwanda became the 50th country to ratify the protocol in 2008, by 1997, significant progress had already been made, encouraging more countries to join the protocol.

3.3.2.9 HUMAN RIGHTS COUNCIL REPLACES THE COMMISSION ON HUMAN RIGHTS

The United Nations Human Rights Council was established in 2006, replacing the Commission on Human Rights. The Human Rights Committee, established under the ICCPR to monitor implementation, continues to function as part of the UN human rights machinery.

3.3.2. 50TH ANNIVERSARY OF THE ICCPR

The ICCPR outlines fundamental civil and political rights, such as the right to life, freedom of speech, freedom of assembly, and the right to a fair trial. The 50th anniversary was an occasion for the global community to reflect on the progress made in the protection of these rights and to reaffirm commitments to upholding and promoting them. Various events, discussions, and publications were organized worldwide to commemorate the significance of the ICCPR in advancing human rights globally.

3.3.2. CONTINUED IMPLEMENTATION AND MONITORING

The ICCPR remains a cornerstone of international human rights law. As of 2023, it has been ratified by over 170 countries, and the Human Rights Committee continues to monitor its implementation, hear individual complaints, and issue general comments to clarify the provisions of the Covenant.

This chronology highlights the significant milestones in the development, adoption, and implementation of the ICCPR, underscoring its enduring impact on the protection of civil and political rights worldwide.

3.3.3 INDIA'S APPROACH TOWARDS INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

India has been a significant participant in the International Covenant on Civil and Political Rights (ICCPR). Here's an overview of India's stand and actions concerning the ICCPR:

Ratification and Accession:

India signed the ICCPR on April 10, 1979, and ratified it on July 10, 1979. By doing so, India committed to upholding the civil and political rights outlined in the Covenant, such as the right to life, freedom of speech, freedom of assembly, and the right to a fair trial.

Reservations and Declarations:

With ratifying the ICCPR, India made several reservations and declarations, particularly concerning Article 9 (right to liberty and security), Article 13 (expulsion of aliens), Article 19

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(freedom of expression), Article 21 (right of peaceful assembly), and Article 22 (freedom of association). These reservations were primarily made to align the ICCPR with India's domestic laws and policies.

Key Reservation: India made a significant reservation regarding Article 1, which pertains to the right of self-determination. India clarified that this right would be interpreted in the context of India's territorial integrity and sovereignty, particularly concerning regions like Jammu and Kashmir.

Implementation:

Incorporation into Domestic Law: India's legal system and Constitution already enshrine many of the rights protected under the ICCPR. Fundamental rights provided under the Indian Constitution¹⁴, such as the right to equality, freedom of speech, and protection against arbitrary arrest and detention, align with the rights outlined in the ICCPR.

Judicial Interpretation: The Indian judiciary has referenced the ICCPR in various judgments, particularly in the context of interpreting fundamental rights under the Constitution. However, since international treaties are not automatically enforceable as law in India, the ICCPR's provisions are applied through domestic legislation.

Optional Protocols:

First Optional Protocol: India has not ratified the First Optional Protocol to the ICCPR, which allows individuals to submit complaints to the UN Human Rights Committee regarding violations of the Covenant by the state.

Second Optional Protocol: India has also not ratified the Second Optional Protocol to the ICCPR, which aims at the abolition of the death penalty.

Challenges and Criticism:

Human Rights Issues: Despite its commitment to the ICCPR, India has faced criticism from various human rights organizations and international bodies regarding issues like restrictions on freedom of expression, arbitrary detention, the use of sedition laws, and the application of the death penalty.

Balancing Sovereignty and Human Rights: India often emphasizes its sovereignty and the need to balance international obligations with domestic realities. This stance has sometimes led to reservations in fully implementing or accepting international human rights standards.

In summary, while India is a party to the ICCPR and has incorporated many of its principles into domestic law, the country maintains certain reservations and has not ratified the optional protocols, reflecting its approach to balancing international human rights commitments with domestic considerations.

¹⁴ See Part III of Indian Constitution; *Article 12 to 35*

3.3.4 GEOPOLITICAL INFLUENCE OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights (ICCPR) has significant geopolitical influence, affecting international relations, state behavior, and human rights advocacy across different regions. Here's an overview of its geopolitical influence:

1. Global Norm-Setting

The ICCPR establishes global norms for civil and political rights, which influence how states interact on human rights issues. Countries often cite adherence to the ICCPR in their foreign policies and international relations to demonstrate their commitment to human rights.

2. Diplomatic Pressure and Accountability

Ratifying the ICCPR subjects countries to international scrutiny. States can use the ICCPR to apply diplomatic pressure on other countries to improve their human rights records. Non-compliance with the Covenant's provisions can lead to international criticism, sanctions, or diplomatic isolation.

3. Human Rights Advocacy

The ICCPR provides a legal framework for human rights organizations to advocate for change. It empowers civil society groups and activists to hold their governments accountable for human rights violations. This advocacy often transcends national borders, influencing regional and global human rights movements.

4. Influence on Domestic Law

Many countries have incorporated the principles of the ICCPR into their constitutions and legal systems. This integration reinforces the Covenant's influence on domestic policies, often leading to legal reforms that align national laws with international human rights standards.

5. Regional Variations

The ICCPR's impact varies by region:

Western Democracies: Countries in Europe, North America, and some parts of Asia-Pacific generally uphold the ICCPR, using it to promote civil and political rights both domestically and internationally.

Authoritarian Regimes: In authoritarian states¹⁵, such as China, Russia, North Korea and Saudi Arabia, the ICCPR's influence is often more symbolic. While many have ratified the Covenant, they may impose reservations or selectively implement its provisions, leading to criticisms from the international community.

¹⁵ See glossary

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Developing Nations: In many developing countries, the ICCPR serves as a benchmark for human rights, though economic and political challenges may hinder full implementation.

6. Influence on International Organizations

The ICCPR informs the policies and actions of international organizations like the United Nations, the European Union, and the African Union. These organizations often reference the Covenant in their human rights reports, diplomatic initiatives, and development aid conditions.

7. Strategic Use by States

Some states use the ICCPR strategically to strengthen their global image or to criticize rivals. For example, a country might emphasize its adherence to the ICCPR in international forums to gain moral authority, while simultaneously criticizing the human rights records of adversaries.

8. Controversial Interpretations and Reservations

The geopolitical influence of the ICCPR is complicated by the reservations and interpretative declarations that some countries make when ratifying the Covenant. These reservations can limit the application of certain provisions, leading to debates and tensions over the true commitment of these states to international human rights standards.

9. Impact on International Legal Proceedings

The ICCPR is frequently referenced in international courts and tribunals, influencing legal judgments related to human rights. This legal influence extends to cases involving state actions, war crimes, and the treatment of prisoners, among others.

10. Tensions with Sovereignty

The ICCPR's international obligations sometimes clash with national sovereignty, especially in countries that prioritize state control over individual rights. This tension can lead to resistance against international human rights norms, fueling geopolitical disputes.

11. Soft Power and Global Influence

Countries that promote and uphold the ICCPR can enhance their soft power, using their commitment to civil and political rights to influence global opinion and foster international cooperation.

12. Emerging Powers and Human Rights

As emerging powers like China and India assert themselves on the global stage, their interpretation and application of the ICCPR are increasingly scrutinized. These countries' approaches to the ICCPR can shape regional dynamics and influence global human rights discourse.

13. Human Rights as a Tool in Geopolitical Conflicts

In geopolitical conflicts, the ICCPR is often invoked to criticize the human rights practices of opponents. This can be seen in the context of international disputes, where human rights become a battleground for moral and political leverage.

In summary, the ICCPR's geopolitical influence is vast and multifaceted, shaping international relations, domestic policies, and global human rights advocacy. Its role in international diplomacy, legal frameworks, and regional dynamics underscores its significance in the global political landscape.

3.4 SUMMARY

The International Covenant on Civil and Political Rights (ICCPR) is a key international treaty that outlines the civil and political rights of individuals. It serves as a critical framework for the protection of civil and political rights globally. It was adopted by the United Nations General Assembly on December 16, 1966, alongside the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These two covenants, together with the UDHR, form the International Bill of Human Rights. The processes of signature, ratification, and accession are crucial for the ICCPR's global influence, ensuring that countries commit to upholding the civil and political rights enshrined in the treaty.

The ICCPR entered into force on March 23, 1976, after the required number of ratifications by member states.

As of 2024, the ICCPR has 173 state parties, which include countries that have ratified or acceded to the treaty.

The widespread adoption of the ICCPR reflects the global commitment to civil and political rights, although implementation and adherence vary by country.

The World Conference on Human Rights held in Vienna reaffirmed the importance of the ICCPR and emphasized the universality, indivisibility, and interdependence of all human rights, including civil and political rights.

With the 50th ratification, the protocol gained further legitimacy and momentum, encouraging more countries to consider abolition of the death penalty and join the protocol. It also strengthened the international community's resolve to push for the global abolition of capital punishment as a human rights imperative.

The 50th anniversary of the ICCPR was marked by various events and reflections on the progress made in the protection of civil and political rights globally.

The United Nations Human Rights Committee (UNHRC) is responsible for monitoring the implementation of the ICCPR by its member states. Countries that have ratified the ICCPR are required to submit regular reports on how the rights are being implemented, and the Committee reviews these reports and provides recommendations. The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, has been ratified by over 90 countries. However, the death penalty remains a contentious issue, with some states still maintaining it despite the Protocol. The ICCPR has had a profound influence on the development of national

constitutions and human rights legislation. Many countries have incorporated its principles into their legal systems, and it serves as a benchmark for evaluating human rights practices worldwide. The ICCPR remains relevant in addressing contemporary human rights issues such as digital privacy, freedom of expression in the age of social media, and the rights of refugees and migrants. The UNHRC continues to interpret the Covenant in light of new challenges and emerging global issues. The ICCPR's influence varies across different regions. In some areas, it serves as a powerful tool for civil society and human rights defenders, while in others, particularly in authoritarian regimes, its implementation is more limited. Human rights organizations, NGOs, and activists continue to advocate for the full implementation of the ICCPR, especially in countries where civil and political rights are under threat. The Covenant is frequently invoked in international human rights litigation and advocacy efforts. In short the ICCPR remains a cornerstone of international human rights law, widely accepted and influential, yet facing challenges in enforcement and interpretation across different global contexts.

3.5 GLOSSARY

1. **Alien:** In the context of the International Covenant on Civil and Political Rights (ICCPR), the term "alien" refers to a person who is not a citizen or national of the state in which they are residing or present. In other words, an alien is a foreigner or non-national.
2. **Fundamental Rights:** The Fundamental Rights in the Indian Constitution are enshrined in Part III, from Articles 12 to 35. These rights are essential for the protection of individual liberties and promote the welfare of citizens.
3. **Authoritarian states:** Authoritarian states are political systems where power is concentrated in the hands of a single leader, a small elite, or a ruling party, with little to no effective constitutional accountability to the public. In such systems, political pluralism is often limited, civil liberties are restricted, and opposition to the government is either controlled or suppressed.
4. **Covenant:** The term "covenant" refers to a formal, solemn, and binding agreement or promise between two or more parties. In legal, religious, or historical contexts, a covenant often signifies a pledge or contract that imposes obligations and grants rights to the parties involved. Covenants can be found in various settings, including treaties between nations, agreements in religious texts, or contracts in legal matters.
5. **Protocol:** A protocol is a set of rules or guidelines that are followed in specific situations to ensure order, consistency, and proper conduct.

3.6 SAQS

1. Short Answer Questions:

- a) The India has not ratified the both optional protocols. Give the reason.
- b) Which article of ICCPR gives Right to Life?
- c) Why December 10, is also celebrated every year as Human Rights Day.?

2. True and false

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- a) The ICCPR, along with the UDHR and ICESCR is known as the International Bill of Human Rights.
(i) True, (ii) False.
- b) The ICCPR entered into force on March 23, 1976, after it had been ratified by 35 states, as required by the Covenant.
(i) True, (ii) False.
- c) The aim of Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) is imposition of the death penalty.
(i) True, (ii) False.

3. Fill in the blanks

- a) There arein ICCPR and Articles in total.
- b) Thealso covers economic, social, and cultural rights.
- c) The international obligations ofsometimes clash with national sovereignty.

3.7 REFERENCES

- 1. <https://nhrc.nic.in/sites/default/files/International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf>
- 2. International Covenant on Civil and Political Rights
- 3. "Human Rights: An Overview with Special Focus on ICCPR" by S. K. Kapoor
- 4. "Human Rights and International Law: Developments and Challenges" by H.O. Agarwal
- 5. Universal Declaration of Human Rights (UDHR)

3.8 SUGGESTED READINGS

- 1. "Human Rights: An Overview with Special Focus on ICCPR" by S. K. Kapoor
- 2. "Human Rights and International Law: Developments and Challenges" by H.O. Agarwal
- 3. "International Human Rights Law and Practice" by Dr. Raj Kumar
- 4. "Human Rights in International Law" by Dr. S. K. Verma
- 5. "Human Rights in India: Theory and Practice" by Satvinder Juss
- 6. "The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary" by Sarah Joseph, Jenny Schultz, और Melissa Castan
- 7. "The UN Human Rights Committee: Practice and Procedure" by Michael O'Flaherty

3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- 1. "The International Covenant on Civil and Political Rights (ICCPR) is considered a cornerstone of international human rights law." Justify this.
- 2. What is Universal Declaration of Human Rights ?
- 3. What do you understand by the Second Optional Protocol to the International Covenant on Civil and Political Rights? Why India does not ratify it?
- 4. Write a short note on Vienna Declaration.

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5. Give a summary on Geopolitical Influence of The International Covenant on Civil and Political Rights.

Answers

SAQS

1. a) Refer 3.3.3; b) Article 6; c) Refer 3.3.2.1;
2. a) true; b) true; c) false;
3. a) VI parts, 53; b) UDHR; c) ICCPR;

TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Refer 3.3.1 and 3.3.4;
2. Refer 3.3.2.1
3. Refer 3.3.2.6 and 3.3.3
4. Refer 3.3.2.7
5. Refer 3.3.4

UNIT 4

**ECONOMIC, SOCIAL AND CULTURAL RIGHTS UNDER
INTERNATIONAL LAW**

4.1 INTRODUCTION

4.2 OBJECTIVES

4.3 SUBJECT

4.3.1 REQUIREMENT OF THE INTERNATIONAL COVENANT ON ECONOMIC,
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4.3.2 KEY FEATURES OF THE INTERNATIONAL COVENANT ON ECONOMIC,
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4.3.2.2 PART II: GENERAL STATE OBLIGATIONS

4.3.2.3 PART III: SPECIFIC RIGHTS

4.3.2.4 PART IV: MONITORING AND IMPLEMENTATION

4.3.2.5 PART V: FINAL PROVISIONS

4.3.3 SIGNIFICANT EVENTS AND DEVELOPMENTS RELATED TO THE ICESCR

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4.3.3.2 FORMATION OF THE UNITED NATIONS (UN) (1945)

4.3.3.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) (1948)

4.3.3.4 DRAFTING OF THE COVENANT (1950S–1960S)

4.3.3.5 ADOPTION OF THE ICESCR (1966)

4.3.3.6 ENTRY INTO FORCE (1976)

4.3.3.7 ESTABLISHMENT OF THE COMMITTEE ON ECONOMIC, SOCIAL AND
CULTURAL RIGHTS (CESCR)

4.3.3.8 WORLD CONFERENCE ON HUMAN RIGHTS (VIENNA) (1993)

4.3.3.9 GENERAL COMMENTS AND JURISPRUDENCE (2000S)

4.3.3.10 ADOPTION OF THE OPTIONAL PROTOCOL (2008)

4.3.3.11 SUSTAINABLE DEVELOPMENT GOALS (SDGS) (2015–2030)

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4.3.4 ONGOING MONITORING AND JURISPRUDENCE AND OTHER

DEVELOPMENT

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4.3.4.2 INTERNATIONAL ADVOCACY AND PROMOTION OF ESCR

4.3.4.3 REGIONAL HUMAN RIGHTS SYSTEMS

4.3.4.4 LINKING ICESCR WITH OTHER HUMAN RIGHTS TREATIES

4.3.4.5 MONITORING AND DATA COLLECTION

4.3.4.6 GLOBAL EFFORTS TO ADDRESS ECONOMIC AND SOCIAL INEQUALITY:

4.3.4.7 FOCUS ON MARGINALIZED AND VULNERABLE GROUPS

4.3.5 CHALLENGES TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

4.3.5.1 LACK OF IMMEDIATE ENFORCEMENT

4.3.5.2 AMBIGUITY IN LEGAL OBLIGATIONS

4.3.5.3 WEAK INTERNATIONAL ENFORCEMENT MECHANISMS

4.3.5.4 POLITICAL AND IDEOLOGICAL RESISTANCE

4.3.5.5 MONITORING AND DATA COLLECTION CHALLENGES

4.3.5.6 INTERSECTIONALITY AND MARGINALIZED GROUPS

4.3.5.7 GLOBALIZATION AND INTERNATIONAL TRADE AGREEMENTS

4.3.5.8 ENVIRONMENTAL AND CLIMATE CHALLENGES

4.3.5.9 LACK OF AWARENESS AND PUBLIC PRESSURE

4.3.5.10 TENSION WITH NATIONAL SOVEREIGNTY

4.3.6 INDIA'S STAND TOWARDS THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

4.3.6.1 ECONOMIC RIGHTS GRANTED TO INDIA'S CITIZENS

4.3.6.2 SOCIAL RIGHTS

4.3.6.3 CULTURAL RIGHTS

4.3.6.4 BALANCING SOCIAL AND CULTURAL RIGHTS WITH OTHER FREEDOMS

4.4 SUMMARY

4.5 GLOSSARY

4.6 SAQS

4.7 REFERENCES

4.8 SUGGESTED READINGS

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

4.1 INTRODUCTION

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976. It is also a key international treaty that recognizes and protects a wide range of economic, social, and cultural rights. The ICESCR is one of the two treaties that, along with the International Covenant on Civil and Political Rights (ICCPR), form the cornerstone of international human rights law under the framework of the International Bill of Human Rights.

The need for ICESCR stems from its role in addressing fundamental human rights related to dignity, well-being, and equality. It ensures that all people have access to the basic conditions necessary for a decent life, promotes economic and social justice, and creates a global standard for protecting and fulfilling these essential rights. Without ICESCR, millions of people would be left without legal protection for their most basic needs.

The main objective of the ICESCR is to improve the quality of life for all individuals. In the present unit we discuss the need, objectives, adoption and key features of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

4.2 OBJECTIVES

After reading this unit you will be able to understand the following:

- The need of the economic, social and cultural right;
- Main objectives of the International Covenant on Economic, Social, and Cultural Rights;
- Frame work of the International Covenant on Economic, Social, and Cultural Rights;
- Significant events and development of the ICSCER;
- Challenges to the International Covenant on Economic, Social, and Cultural Rights;
- economic, social and cultural rights provided to the indian citizens;

4.3 SUBJECT

4.3.1 Requirement of The International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is essential for several reasons, as it addresses fundamental human rights that are crucial for individual

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dignity and societal well-being. The need for the ICESCR can be explained through the following points:

1. Protection of Basic Human Needs:

ICESCR ensures that individuals have access to the basic necessities of life, such as food, clean water, housing, healthcare, education, and social security. These rights are essential for living a dignified life and addressing issues like poverty, hunger, and inequality.

2. Promoting Economic and Social Justice:

Economic, social, and cultural rights aim to reduce disparities between different groups in society. ICESCR provides a framework for ensuring equal access to opportunities and resources, helping to address systemic inequalities and promote social justice.

3. Complementing Civil and Political Rights:

While the International Covenant on Civil and Political Rights (ICCPR) focuses on individual freedoms such as the right to vote, freedom of speech, and protection from discrimination, the ICESCR focuses on rights related to living conditions and social well-being. Both sets of rights are interconnected, and without economic, social, and cultural rights, civil and political rights alone would be insufficient to ensure a life of dignity.

4. Addressing Global Poverty:

The ICESCR plays a crucial role in combating global poverty by emphasizing the right to work, social security, adequate living standards, and education. It encourages states to take steps to reduce poverty and improve living conditions, ensuring that everyone, particularly marginalized groups, can access basic resources and services.

5. Promoting Health and Well-being:

Access to healthcare is a critical right under ICESCR. The Covenant stresses the right to the highest attainable standard of physical and mental health, promoting healthcare services, disease prevention, and access to medical care, which is vital for overall societal well-being.

6. Supporting Education for All:

ICESCR promotes universal access to education, highlighting its importance for personal and societal development. Education is key to reducing poverty, empowering individuals, and promoting social and economic mobility, making it a central focus of the Covenant.

7. Global Standard for Human Rights:

ICESCR sets a universal standard for the protection of economic, social, and cultural rights. It provides a legal framework and a set of guidelines for countries to follow, ensuring accountability and progress in promoting these rights.

8. International Cooperation and Development:

The Covenant encourages international cooperation to improve the conditions of people in all countries, particularly in developing nations. It recognizes that some states may need assistance in fulfilling these rights and promotes global solidarity to address issues like poverty, hunger, and illiteracy on a global scale.

9. Promoting Equality and Non-Discrimination:

ICESCR reinforces the need for equality and non-discrimination in the realization of economic, social, and cultural rights. It ensures that marginalized and vulnerable groups, such as women, children, ethnic minorities, and persons with disabilities have equal access to these rights.

10. Sustainable Development and Peace:

Economic, social, and cultural rights are crucial for sustainable development and peace. By ensuring that people have access to work, education, and healthcare, ICESCR helps prevent conflict and instability, which often arise from inequality and unmet needs.

The need for ICESCR stems from its role in addressing fundamental human rights related to dignity, well-being, and equality. It ensures that all people have access to the basic conditions necessary for a decent life, promotes economic and social justice, and creates a global standard for protecting and fulfilling these essential rights. Without ICESCR, millions of people would be left without legal protection for their most basic needs. the main objective of the ICESCR is to build a framework for governments to ensure the above rights.

4.3.2 KEY FEATURES OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

The ICESCR is designed to ensure the protection of rights related to economic, social, and cultural well-being. This includes ensuring that all people have the necessary resources and opportunities to live in dignity, such as access to education, healthcare, employment, and adequate living standards. The Covenant follows the structure of the UDHR and the ICCPR. It is divided into five parts, each containing articles that address specific aspects of economic, social, and cultural rights, as well as state obligations and implementation mechanisms.

Preamble

The preamble affirms the connection between economic, social, and cultural rights and the principles of human dignity, equality, and global justice. It emphasizes that these rights are essential for achieving a life free from fear and want, which is a core objective of the United Nations and the broader human rights framework established by the Universal Declaration of Human Rights (UDHR).

4.3.2.1 PART I: RIGHT OF SELF-DETERMINATION

This part contains only one article, but it is foundational and applies to all human rights treaties.

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Article 1

- Recognizes the right of all peoples to self-determination. This means that people have the right to freely determine their political status and freely pursue their economic, social, and cultural development.
- It emphasizes that people should control their natural resources and wealth, and no people should be deprived of their means of subsistence.
- It also places a duty on states to promote and respect this right.

4.3.2.2 PART II: GENERAL STATE OBLIGATIONS

This part outlines the general obligations of state parties concerning the rights recognized in the Covenant.

Article 2

- States must take steps, both individually and through international cooperation, to progressively realize the rights recognized in the Covenant, using the maximum of their available resources.
- Recognizes that states may need international assistance to fully realize these rights.
- Guarantees that the rights must be exercised without discrimination based on race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status.

Article 3

- States are obligated to ensure equal rights for men and women in the enjoyment of all economic, social, and cultural rights.

Article 4

- Allows for limitations on the rights recognized in the Covenant, but only if they are determined by law, and solely to promote the general welfare in a democratic society.

Article 5

- Prevents the misuse of the Covenant by stating that nothing in the Covenant can be interpreted as giving any state, group, or person the right to engage in activities aimed at the destruction of any of the rights recognized in the Covenant.

4.3.2.3 PART III: SPECIFIC RIGHTS

This part enumerates the specific economic, social, and cultural rights that the Covenant guarantees.

Article 6: Right to Work

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- Recognizes the right to work, including the right to freely choose or accept employment. States must take measures to achieve full employment and protect workers' rights.

Article 7: Right to Just and Favorable Conditions of Work

- Ensures fair wages, equal remuneration for work of equal value, safe working conditions and rest, leisure, and reasonable limitation of working hours.

Article 8: Right to Form Trade Unions

- Recognizes the right to form and join trade unions, and to strike. It places limitations only in cases of national security, public order, or the rights of others.

Article 9: Right to Social Security

- Guarantees the right to social security, including social insurance.

Article 10: Protection of Family, Mothers, and Children

- Recognizes the protection and assistance to the family. Special protection should be given to mothers before and after childbirth, and children should be free from economic and social exploitation.

Article 11: Right to an Adequate Standard of Living

- Ensures everyone has the right to an adequate standard of living, including adequate food, clothing, and housing, and the continuous improvement of living conditions. It also addresses the right to be free from hunger.

Article 12: Right to Health

- Recognizes the right of everyone to the highest attainable standard of physical and mental health. This includes access to medical services, sanitation, and disease prevention measures.

Article 13: Right to Education

- Recognizes the right to education. Primary education should be compulsory and free, secondary education should be generally available and progressively free, and higher education should be accessible to all based on capacity.

Article 14: Compulsory Primary Education

- Requires that state parties without free primary education develop a plan for its introduction.

Article 15: Right to Participate in Cultural Life

- Recognizes the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress, and to benefit from the protection of interests resulting from any scientific, literary, or artistic production.

4.3.2.4 PART IV: MONITORING AND IMPLEMENTATION

This part outlines the mechanisms for monitoring the implementation of the Covenant by state parties.

Article 16

- Requires states to submit reports on the measures they have taken to implement the Covenant. These reports are submitted to the Economic and Social Council (ECOSOC).

Article 17

- Describes the content and periodicity of the reports, which may be sent in stages based on the issues covered.

Article 18

- ECOSOC may forward reports to other specialized agencies (like the World Health Organization or UNESCO) for consideration in areas within their expertise.

Article 19

- Specialized agencies can submit reports on their own efforts related to the rights in the Covenant.

Article 20

- ECOSOC can provide general comments on the reports submitted by state parties.

Article 21

- ECOSOC may make recommendations to the General Assembly based on the reports received.

Article 22

- ECOSOC may also call upon UN bodies to assist in realizing the rights recognized in the Covenant.

Article 23

- Encourages international cooperation to further the realization of economic, social, and cultural rights.

Article 24 and Article 25

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- Cover procedural matters regarding the submission and distribution of reports and communication with the Secretary-General.

4.3.2.5 PART V: FINAL PROVISIONS

The final part contains provisions on the ratification, amendment, and other procedural aspects of the Covenant.

Article 26

- The Covenant is open for signature and ratification by all states.

Article 27

- Details how the Covenant enters into force after the ratification by 35 states.

Article 28

- States the Covenant applies to all parts of federal states without limitation.

Article 29

- Provisions are made for the amendment of the Covenant.

Article 30

- The Secretary-General of the United Nations is designated as the official depository of the Covenant.

Article 31

- Provides the texts of the Covenant in the official languages of the United Nations.

It is clear from the above framework that the ICESCR structure establishes a holistic approach to protecting essential human rights, emphasizing the importance of state responsibility, equality, and international solidarity in achieving social and economic justice. The above structure ensures that states have clear guidance on implementing the rights and are held accountable for their efforts through reporting and monitoring by international bodies.

4.3.3 SIGNIFICANT EVENTS AND DEVELOPMENTS RELATED TO THE ICESCR

Over the decades, several developments have enhanced the realization of economic, social, and cultural rights globally. Here's a chronology of the significant events and developments related to the ICESCR:

4.3.3.1 HISTORICAL CONTEXT (PRE-1945)

Early Human Rights Movements: Before World War II, economic, social, and cultural rights were recognized in certain domestic legal systems but were not yet formalized at the international level.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

Industrial Revolution: Growing awareness of workers' rights, child labor, education, and healthcare began in response to the poor conditions caused by industrialization.

4.3.3.2 FORMATION OF THE UNITED NATIONS (UN) (1945)

UN Charter: The United Nations was established after World War II. The UN Charter (1945) emphasized the promotion of human rights, without initially distinguishing between civil and political rights and economic, social, and cultural rights.

4.3.3.3 UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR) (1948)

The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly, was the first international document to recognize both civil and political rights as well as economic, social, and cultural rights.

Articles 22 to 27 of the UDHR outline economic, social, and cultural rights such as the right to social security, work, education, and an adequate standard of living.¹⁶

4.3.3.4 DRAFTING OF THE COVENANT (1950S–1960S)

During the drafting process, disagreements arose between countries, particularly regarding the division of rights. Western countries prioritized civil and political rights, while socialist countries emphasized economic, social, and cultural rights.

As a result, two separate covenants were drafted: one focusing on civil and political rights¹⁷, and the other on economic, social, and cultural rights.

4.3.3.5 ADOPTION OF THE ICESCR (1966)

December 16, 1966: The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly as Resolution 2200A (XXI), alongside the International Covenant on Civil and Political Rights (ICCPR). Both covenants, along with the UDHR, form the International Bill of Human Rights.

The ICESCR laid out specific rights, such as the right to work, education, healthcare, social security, and cultural participation.

4.3.3.6 ENTRY INTO FORCE (1976)

January 3, 1976: The ICESCR officially came into force after the 35th country ratified it. This marked the beginning of the Covenant's legal enforceability for state parties that had ratified it.

¹⁶ For detail see unit 3

¹⁷ the International Covenant on Civil and Political Rights (ICCPR)

4.3.3.7 ESTABLISHMENT OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

Formation (1985): Although the ICESCR did not originally provide for the creation of a committee, the Committee on Economic, Social, and Cultural Rights (CESCR) was established by the Economic and Social Council (ECOSOC) in 1985. Its main function is to monitor the implementation of the Covenant by reviewing the reports submitted by state parties.

4.3.3.8 WORLD CONFERENCE ON HUMAN RIGHTS (VIENNA) (1993)

The Vienna Declaration and Programme of Action emphasized the universality, indivisibility, and interdependence of all human rights. This confirmed the equal importance of economic, social, and cultural rights in relation to civil and political rights.

4.3.3.9 GENERAL COMMENTS AND JURISPRUDENCE (2000S)

The CESCR began issuing General Comments that provide authoritative interpretations of the Covenant's articles. These comments clarify the scope of specific rights and the obligations of state parties—for example, General Comment No. 12 (1999) on the Right to Adequate Food, (article 11), General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health (article 12) and General Comment No. 13 (1999) on the Right to Education, have been particularly influential in shaping how states should interpret and implement these rights.

4.3.3.10 ADOPTION OF THE OPTIONAL PROTOCOL (2008)

The Optional Protocol¹⁸ to the ICESCR was adopted in 2008 and entered into force in 2013. This is a significant development, as it allows individuals or groups to submit complaints (communications) to the CESCR if their rights under the Covenant have been violated and if domestic remedies have been exhausted. This provided a complaints mechanism similar to the one already in place for the ICCPR.

¹⁸Purpose of an Optional Protocols:

- Strengthening Accountability: Optional Protocols often introduce mechanisms like individual complaints procedures, allowing citizens to hold states accountable for violations of rights protected under the main treaty.
- Addressing Gaps: Sometimes, the main treaty may be too broad or lack sufficient enforcement provisions. The Optional Protocol can fill these gaps, providing more detailed procedures or protections.
- Expanding Rights: In some cases, Optional Protocols expand the scope of rights protection, such as by extending the treaty's protections to additional groups or addressing newly emerging issues.

The Optional Protocol strengthens the accountability mechanisms for states by offering victims of economic, social, and cultural rights violations a direct route to seek justice at the international level.

4.3.3.11 SUSTAINABLE DEVELOPMENT GOALS (SDGs) (2015–2030)

The adoption of the Sustainable Development Goals (SDGs) in 2015 reinforced the significance of economic, social, and cultural rights. Goals such as ending poverty, ensuring education, achieving gender equality, ensuring healthcare, and promoting decent work align closely with the ICESCR's provisions.

The SDGs provide a global framework for the progressive realization of many of the rights outlined in the ICESCR.

4.3.4 ONGOING MONITORING AND JURISPRUDENCE AND OTHER DEVELOPMENT

The CESCR continues to monitor the implementation of the ICESCR through state reports and issues concluding observations with recommendations to state parties. Several national courts have used the ICESCR and its General Comments to guide domestic rulings on issues like housing, health, education, and workers' rights.

4.3.4.1 ADVANCES IN ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ESCR) JURISPRUDENCE

Over the years, jurisprudence related to economic, social, and cultural rights has evolved. Courts in many countries have increasingly interpreted and applied these rights within domestic legal systems. For instance:

- India has recognized the Right to Education and the Right to Health as fundamental constitutional rights.
- South Africa has ruled on cases related to the Right to Housing and the Right to Water, building on the principles outlined in the ICESCR.

The incorporation of ICESCR rights into national legal frameworks has enabled greater enforcement and realization of these rights at the domestic level.

4.3.4.2 INTERNATIONAL ADVOCACY AND PROMOTION OF ESCR

Non-Governmental Organizations (NGOs), such as Amnesty International and Human Rights Watch, have increasingly focused on economic, social, and cultural rights in their global campaigns. These organizations have promoted the importance of the ICESCR in addressing issues like poverty, housing rights, labour rights, and access to healthcare.

The United Nations has initiated several global programs targeting issues related to economic and social development, such as the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs), which align closely with the rights protected by the ICESCR (e.g., poverty reduction, access to education, and healthcare).

4.3.4.3 REGIONAL HUMAN RIGHTS SYSTEMS

Regional human rights mechanisms have also recognized and incorporated economic, social, and cultural rights, drawing from the ICESCR. For example:

- The African Charter on Human and Peoples' Rights (1981) contains provisions on economic, social, and cultural rights, and the African Commission has adjudicated cases involving these rights.
- The European Social Charter addresses similar rights and complements the ICESCR within Europe.
- The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights have made significant rulings that promote economic, social, and cultural rights within the Americas.

4.3.4.4 LINKING ICESCR WITH OTHER HUMAN RIGHTS TREATIES

Economic, social, and cultural rights are often seen as interconnected with civil and political rights, as outlined in the International Covenant on Civil and Political Rights (ICCPR). Courts and human rights bodies have increasingly recognized the indivisibility and interdependence of these two sets of rights. For example, the right to life (ICCPR) is often linked to access to healthcare, clean water, and adequate living standards, which are protected by the ICESCR.

4.3.4.5 MONITORING AND DATA COLLECTION

Since the adoption of the ICESCR, international organizations such as the United Nations Development Programme (UNDP) and World Health Organization (WHO) have developed new tools and methods for monitoring the realization of economic, social, and cultural rights.

Data collection on poverty, access to healthcare, food security, and education has become a critical tool for holding states accountable for their ICESCR obligations.

4.3.4.6 GLOBAL EFFORTS TO ADDRESS ECONOMIC AND SOCIAL INEQUALITY

The post-ICESCR period has seen global efforts to reduce inequality and address economic disparities - these are central to the Covenant's aims. Initiatives like the Sustainable Development Goals (SDGs) set ambitious targets to eradicate poverty, ensure universal healthcare, and provide quality education, directly linking to the ICESCR's provisions.

International financial institutions, including the World Bank and International Monetary Fund (IMF), have increasingly considered the importance of human rights in their development programs, focusing on rights to housing, health, education, and work.

4.3.4.7 FOCUS ON MARGINALIZED AND VULNERABLE GROUPS

The CESC and global human rights bodies have paid special attention to the rights of marginalized and vulnerable populations, including women, indigenous peoples, migrants, and persons with disabilities. The Convention on the Rights of Persons with Disabilities (CRPD)

and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) have reinforced the obligations of states under the ICESCR to protect the economic, social, and cultural rights of these groups.

4.3.5 CHALLENGES TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

The post-development of the ICESCR has been marked by several key achievements, including the establishment of the CESCR, the adoption of the Optional Protocol, the growing recognition of economic, social, and cultural rights in domestic and international law, and the development of monitoring mechanisms. However, challenges like resource limitations and weak enforcement mechanisms persist, requiring continuous global efforts to fully realize the rights enshrined in the ICESCR. Here are the major challenges:

4.3.5.1 LACK OF IMMEDIATE ENFORCEMENT

Progressive Realization: One of the defining features of the ICESCR is the concept of “progressive realization” (Article 2.1), which means that states are required to take steps to realize these rights over time, following their available resources. This gives states flexibility but can also be an excuse for delaying full implementation.

Resource Constraints: Many states, particularly developing nations, struggle with resource limitations, making it difficult to meet their obligations under the ICESCR. The lack of financial capacity, especially in low-income countries, hinders the provision of healthcare, education, housing, and other rights.

4.3.5.2 AMBIGUITY IN LEGAL OBLIGATIONS

The obligations under the ICESCR are sometimes seen as vague or difficult to define compared to civil and political rights. Civil and political rights, such as freedom of speech or the right to a fair trial, can be immediately enforced, whereas the economic, social, and cultural rights (ESCR) protected by the ICESCR often depend on political and economic conditions, leading to varied interpretations and applications. For example, what constitutes an “adequate” standard of living or “just” wages can differ based on a country’s context, making uniform application challenging.

4.3.5.3 WEAK INTERNATIONAL ENFORCEMENT MECHANISMS

No Strong Enforcement Body: Unlike civil and political rights, which are overseen by strong bodies like the Human Rights Committee (for the ICCPR), the ICESCR is monitored by the Committee on Economic, Social, and Cultural Rights (CESCR), which has limited power. It can issue recommendations, but these are not legally binding, and the committee cannot compel states to comply with its observations.

Optional Protocol: While the Optional Protocol to the ICESCR (adopted in 2008) allows individuals to file complaints regarding violations of ICESCR, only a small number of states

have ratified it, which limits its reach and effectiveness. Additionally, even where the protocol is in force, the CESCR's decisions on individual complaints are non-binding.

4.3.5.4 POLITICAL AND IDEOLOGICAL RESISTANCE

Civil vs. Economic Rights: Some states prioritize civil and political rights over economic, social, and cultural rights, arguing that economic rights are more aspirational and less enforceable. This ideological divide has historically been present, especially between Western and socialist or developing nations.

Privatization and Economic Policy Conflicts: In many countries, privatization of key sectors like health, education, and housing has made it harder for the government to guarantee rights under the ICESCR. Market-driven economies often conflict with the need for state intervention to ensure equal access to these rights.

Austerity Measures: Global financial crises and austerity policies¹⁹ adopted by countries under pressure from international financial institutions (e.g., the IMF) can undermine the realization of rights like healthcare, social security, and education. States facing economic crises often cut public spending in precisely these areas, negatively affecting their obligations under the ICESCR.

4.3.5.5 MONITORING AND DATA COLLECTION CHALLENGES

Inadequate Reporting: States are required to submit periodic reports to the CESCR, but many fail to do so on time, or they submit incomplete or misleading reports. This hinders the CESCR's ability to monitor compliance effectively.

Lack of Reliable Data: Many countries lack the capacity or political will to collect reliable data on economic, social, and cultural rights. Without accurate data on poverty rates, healthcare access, or housing quality, it is difficult to assess how well these rights are being implemented.

4.3.5.6 INTERSECTIONALITY AND MARGINALIZED GROUPS

Vulnerable Populations: The ICESCR is supposed to protect the rights of all individuals, but marginalized groups, such as women, children, indigenous peoples, migrants, and persons with disabilities often face additional barriers to accessing economic, social, and cultural rights.

Discrimination and Inequality: Economic and social inequalities aggravate access to rights. The ICESCR requires non-discrimination in the enjoyment of these rights, but systemic discrimination on the basis of gender, race, ethnicity, and disability persists in many societies, making it difficult to achieve equal access to education, healthcare, and employment.

4.3.5.7 GLOBALIZATION AND INTERNATIONAL TRADE AGREEMENTS

¹⁹ See glossary

Impact of Globalization: The forces of globalization, such as free trade agreements and multinational corporations, can undermine the ability of states to protect economic and social rights. For example, global competition may push governments to lower labor standards or environmental protections, which directly affects workers' rights and the right to a healthy environment.

Trade and Investment Agreements: International trade and investment agreements often prioritize economic growth and corporate interests over human rights, making it difficult for states to regulate sectors like labor, healthcare, or education in a way that aligns with their ICESCR obligations.

4.3.5.8 ENVIRONMENTAL AND CLIMATE CHALLENGES

Climate Change: The global environmental crisis poses a significant threat to the rights guaranteed under the ICESCR. Climate change disproportionately affects vulnerable populations and escalate food insecurity, water scarcity, and health issues, all of which are key areas of the Covenant.

Environmental Degradation: Industrial development and environmental degradation can undermine rights to clean water, food, and health. States are often slow to reconcile their economic goals with their ICESCR obligations to protect environmental health and sustainability.

4.3.5.9 LACK OF AWARENESS AND PUBLIC PRESSURE

Limited Public Awareness: Many people are unaware of their rights under the ICESCR, which makes it difficult for them to demand enforcement or hold governments accountable. This contrasts with civil and political rights, which are often more visible and understood by the general public.

Insufficient Advocacy: Advocacy for economic, social, and cultural rights has historically been weaker than that for civil and political rights. This limits public pressure on governments to uphold these rights, even when they are legally bound to do so.

4.3.5.10 TENSION WITH NATIONAL SOVEREIGNTY

Some governments resist what they perceive as interference by international bodies, arguing that the ICESCR impinges on their national sovereignty. States may be reluctant to allow international bodies like the CESCR to scrutinize their domestic policies, particularly on sensitive issues like economic development, poverty reduction, or healthcare reform.

It is clear from above that, the challenges faced by the ICESCR are varied and complex, ranging from legal and political obstacles to resource limitations and ideological opposition. Overcoming these challenges requires international cooperation, stronger monitoring mechanisms, greater awareness of economic and social rights, and political commitment from states. Despite these difficulties, the ICESCR remains a vital instrument for promoting economic, social, and cultural rights globally.

4.3.6 INDIA'S STAND TOWARDS THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

India signed the ICESCR on April 10, 1979, and subsequently ratified it on July 10, 1979. India provides a comprehensive framework for the protection of economic, social, and cultural rights, which are essential for the dignity and development of its citizens. These rights are aligned with the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which India has ratified.

4.3.6.1 ECONOMIC RIGHTS GRANTED TO INDIA'S CITIZENS

Economic rights in India aim to ensure that citizens have access to employment, fair wages, social security, and resources necessary for a decent standard of living.

Right to Work: While not a fundamental right, *Article 41* of the Constitution directs the state to ensure the right to work, public assistance, and unemployment relief. Schemes like the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) guarantee rural citizens at least 100 days of employment annually.

Right to Fair Wages: The Minimum Wages Act (1948) ensures that workers are paid at least a minimum wage, protecting them from exploitation. The Equal Remuneration Act (1976) mandates equal pay for equal work for men and women.

Right to Social Security: India has several programs for social security, including:

- Employee Provident Fund (EPF) and Pension Schemes for formal sector workers.
- National Social Assistance Programme (NSAP) for elderly, disabled, and widowed citizens without adequate support.

Right to Adequate Standard of Living: *Article 21*, which guarantees the right to life, has been interpreted to include the right to food, water, shelter, and clothing. Initiatives like the National Food Security Act (2013) and various housing schemes like Pradhan Mantri Awas Yojana address these needs.

Right to Land and Property: Various land reforms and laws like the Forest Rights Act (2006) grant land ownership rights to forest dwellers and tribal communities. The Hindu Succession Act and amendments allow women equal rights in property inheritance.

Right to Health: *Article 47* directs the state to improve public health and raise the standard of nutrition. Programs like Ayushman Bharat provide health insurance and ensure access to medical facilities for the underprivileged.

4.3.6.2 SOCIAL RIGHTS GRANTED TO INDIA'S CITIZENS

Social rights in India focus on ensuring access to education, healthcare, and social welfare, as well as promoting social justice and equality.

Right to Education: The Right to Education (RTE) Act (2009) made education a fundamental right under *Article 21A* for children aged 6–14 years, mandating free and compulsory education. This right aims to ensure literacy and educational access for all children, regardless of socio-economic background.

Right to Health: Although not explicitly mentioned as a fundamental right, the right to health is derived from the right to life (*Article 21*). The government provides various schemes to ensure public healthcare access, including free treatments in public hospitals (Ayushman Bharat yojana), immunization programs (Swachh Bharat Abhiyan), and maternity benefits under Janani Suraksha Yojana.

Right to Social Welfare: Several programs provide social welfare benefits, particularly for marginalized and vulnerable groups:

- Pension Schemes for the elderly, widows, and disabled.
- Subsidized food programs through the Public Distribution System (PDS) under the National Food Security Act.
- Midday Meal Scheme to improve nutrition for school children.

Right to Social Equality: The Constitution provides affirmative action (reservations) for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC) in government jobs, educational institutions, and legislatures to combat social discrimination and promote equality.

Protection of Women and Children: Special provisions for the protection and welfare of women and children include laws against child labor (Child Labor (Prohibition and Regulation) Act, 1986) and protections against exploitation (Domestic Violence Act, 2005).

4.3.6 3 CULTURAL RIGHTS GRANTED TO INDIA'S CITIZENS

Cultural rights in India are crucial for the preservation and promotion of the diverse cultural, linguistic, and religious heritage of the country. These rights ensure that individuals and communities can maintain their traditions and cultural practices.

Right to Language and Culture: *Articles 29 and 30* of the Constitution guarantee the right of minorities to preserve their language, script, and culture. Minority communities can establish and manage their own educational institutions.

Freedom of Religion: *Articles 25 to 28* guarantee religious freedom, allowing individuals to practice, profess, and propagate their religion freely. Religious communities are also allowed to manage their own affairs in matters of religion.

Protection of Indigenous Cultures: The rights of Scheduled Tribes and other indigenous communities are protected under the Fifth Schedule of the Constitution and laws like the Forest Rights Act (2006), which recognize their right to land and forest resources. The Sixth Schedule grants autonomy to tribal areas in the northeastern states to preserve their unique customs and traditions.

Promotion of Art and Culture: India has various institutions, such as the Sahitya Akademi, National School of Drama, and Sangeet Natak Akademi, dedicated to promoting literature, theater, music, and other cultural arts.

Cultural Heritage Protection: Laws like the Antiquities and Art Treasures Act (1972) and initiatives like UNESCO World Heritage Sites in India protect important cultural sites and artifacts, ensuring their preservation for future generations.

Linguistic Rights: The Eighth Schedule of the Constitution recognizes 22 languages, protecting linguistic diversity. Citizens have the right to communicate in any of these languages in state and central government institutions.

4.3.6.4 BALANCING SOCIAL AND CULTURAL RIGHTS WITH OTHER FREEDOMS

While Indian citizens have extensive social and cultural rights, these rights are balanced with other fundamental freedoms. For example:

Cultural Preservation vs. Individual Rights: While India protects group identities and cultures, it also places importance on individual freedoms, ensuring that no citizen is forced into practices that infringe on their personal autonomy.

Social Justice and Equality: Efforts like affirmative action (reservations) for Scheduled Castes, Scheduled Tribes, and Other Backward Classes are aimed at ensuring social rights and rectifying historical disadvantages.

4.4 SUMMARY

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 3 January 1976. The ICESCR is one of the two treaties that, along with the International Covenant on Civil and Political Rights (ICCPR), form the cornerstone of international human rights law under the framework of the International Bill of Human Rights. The main objective of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is to promote and protect a wide range of economic, social, and cultural rights essential for human dignity and well-being. It is divided into five parts-

Part I: The right of self-determination.

Part II: General obligations of states to progressively realize rights and ensure non-discrimination.

Part III: Specific economic, social, and cultural rights (e.g., work, health, education, and cultural life).

Part IV: Mechanisms for monitoring the implementation of the Covenant, including state reporting to the UN.

Part V: Procedural aspects such as ratification, amendments, and enforcement.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

This structure ensures that states have clear guidance on implementing the rights and are held accountable for their efforts through reporting and monitoring by international bodies. The framework can be broken down into several key elements:

1. Rights Protected Under ICESCR:

- Right to Work (Article 6)
- Right to Just and Favorable Conditions of Work (Article 7)
- Right to Social Security (Article 9)
- Right to an Adequate Standard of Living (Article 11)
- Right to Health (Article 12)
- Right to Education (Articles 13 and 14)
- Right to Participate in Cultural Life (Article 15)

2. Obligations of States:

- Obligation to Respect: States must refrain from interfering with the enjoyment of these rights.
- Obligation to Protect: States must protect individuals from violations of these rights by third parties, such as corporations. For instance, they must prevent private entities from exploiting workers or denying access to essential services.
- Obligation to Fulfill: States must take positive actions to ensure the full realization of these rights, including adopting policies, laws, and allocating resources to make economic, social, and cultural rights accessible to all.

3. Principle of Progressive Realization:

- A key element of the ICESCR framework is the principle of progressive realization (*Article 2*). Unlike civil and political rights, which are expected to be realized immediately, economic, social, and cultural rights can be achieved over time, based on the state's available resources.
- Immediate Obligations: Despite the concept of progressive realization, certain obligations are immediate, such as non-discrimination and ensuring that no one is deprived of their most basic needs (like essential healthcare or food).

4. Non-Discrimination and Equality:

- The Covenant prohibits discrimination of any kind (*Article 2*) in the enjoyment of the rights it protects. This includes discrimination based on race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status.

5. Monitoring and Enforcement Mechanism:

The Committee on Economic, Social, and Cultural Rights (CESCR) oversees the implementation of the ICESCR.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

- State Reporting: States are required to submit periodic reports to the CESCR on the measures they have taken to implement the rights in the Covenant.
- General Comments: The Committee issues general comments to clarify the interpretation of specific articles and rights under the Covenant, offering guidance on how states can comply with their obligations.
- Optional Protocol: The Optional Protocol to the ICESCR (adopted in 2008) allows individuals or groups to submit complaints to the CESCR about violations of their rights under the Covenant if domestic remedies have been exhausted.

6. International Cooperation:

- Developed countries are encouraged to assist developing nations in fulfilling their obligations, particularly in areas like healthcare, education, and economic development (Article 2(1)).

7. Interdependence of Rights:

- The ICESCR highlights the interdependence of economic, social, and cultural rights with civil and political rights, as seen in its close relationship with the International Covenant on Civil and Political Rights (ICCPR). A person's ability to enjoy civil and political rights (such as freedom of expression or the right to vote) is often tied to their economic and social conditions, just as economic and social rights can be influenced by a state's respect for civil liberties.

The ICESCR framework establishes a holistic approach to protecting essential human rights, emphasizing the importance of state responsibility, equality, and international solidarity in achieving social and economic justice. The timeline highlights the evolving nature of economic, social, and cultural rights and the growing international efforts to realize the objectives set out by the ICESCR is given below:

1945: Formation of the UN – Human rights principles introduced.

1948: Universal Declaration of Human Rights (UDHR) adopted.

1966: ICESCR adopted by the UN General Assembly.

1976: ICESCR enters into force.

1985: Committee on Economic, Social and Cultural Rights (CESCR) established.

1993: Vienna Declaration confirms indivisibility of all human rights.

2008: Optional Protocol to ICESCR adopted.

2013: Optional Protocol enters into force.

2015: Sustainable Development Goals (SDGs) adopted, reinforcing the ICESCR's goals.

India's position regarding the International Covenant on Economic, Social, and Cultural Rights (ICESCR) is that of a signatory and state party. In India, economic, social, and cultural rights

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

are enshrined in the Constitution and various legal frameworks to ensure the dignity, equality, and welfare of its citizens, such as:

- *Articles 14–18*: Right to Equality.
- *Article 19*: Right to Freedom of Speech, Expression, and Assembly.
- *Articles 25–28*: Right to Freedom of Religion.
- *Article 39*: Equal pay for equal work, distribution of wealth.
- *Article 41*: Right to work, education, and public assistance.
- *Article 43*: Right to a living wage and decent standard of living.
- *Article 47*: Duty of the state to raise the level of nutrition and improve public health.
- *Article 51A*: Citizens must promote harmony, protect the environment, and preserve India's cultural heritage.

While significant progress has been made, challenges remain, especially in ensuring these rights for marginalized groups such as women, children, Scheduled Castes, Scheduled Tribes, and economically disadvantaged populations.

4.5 GLOSSARY

Austerity policies: Austerity policies refer to government measures aimed at reducing public spending, usually in response to high levels of debt or budget deficits. These policies are typically implemented during times of economic crisis, recession, or financial instability, and their main goal is to restore fiscal balance by cutting government expenditures, reducing public sector wages, or increasing taxes.

Optional Protocol: An Optional Protocol is a supplementary treaty to a main international treaty or covenant that addresses specific issues or procedural mechanisms related to the main treaty. It is termed "optional" because it is not mandatory for countries that are parties to the main treaty to sign or ratify the Optional Protocol; it is an additional commitment that countries can choose to accept.

4.6 SAQS

1. Short Answer Questions

- a) Which article of The International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognizes the right of self-determination?
- b) On which ground limitations are placed on the right to strike?
- c) What do you mean by ECOSOC?
- d) What is the main function of CESCR?

2. Fill in the blanks

- a) ICESCR sets a for the protection of economic, social, and cultural rights.
- b) The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly on

3. True and false

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

a) The main objective of the ICESCR is to build a framework for governments to ensure that all people have access to the basic conditions necessary for a decent life, promotes economic and social justice, and creates a global standard for protecting and fulfilling these essential rights.

(i) True (ii) False

b) There are 7 parts in the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

(i) True (ii) False

c) Progressive Realization delayed the implementation of the ICSCER.

(i) True (ii) False

4.7 REFERENCES

1. https://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights
2. The Constitution of India
3. The Covenant on Economic, Social and cultural Rights

4.8 SUGGESTED READINGS

1. "Human Rights: International Protection, Monitoring, Enforcement" by Raj Kumar; Publisher: LexisNexis India
2. "Human Rights and International Law: Legal and Policy Issues" by S. K. Kapoor; Publisher: Central Law Agency
3. "Human Rights in India: Historical, Social and Political Perspectives" by Chiranjivi J. Nirmal; Publisher: Oxford University Press
4. "Human Rights in India: Issues and Challenges" edited by G.S. Bajwa and Dalbir Bharti; Publisher: Deep & Deep Publications
5. "Economic, Social and Cultural Rights in International Law" edited by Manoj Kumar Sinha; Publisher: Manak Publications Pvt. Ltd.
6. "Human Rights: Theory and Practice" by Aftab Alam; Publisher: Anamika Publishers & Distributors
7. "Enforcing Economic, Social and Cultural Rights in India: A Comparative Perspective" by Sanjay Jain and Simi Samat Pillai; Publisher: LexisNexis Butterworths
8. "The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials" by Ben Saul, David Kinley and Jacqueline Mowbray
9. The Constitution of India

10. The Covenant on Economic, Social and cultural Rights

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Economic, social and cultural rights are necessary for building a civilized society. Comment.
2. Describe the specific rights given under part III of The International Covenant on Economic, Social, and Cultural Rights (ICESCR).
3. Write a short note on the events related to the development and drafting of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).
4. What are the challenges to the International Covenant on Economic, Social, and Cultural Rights?
5. Write an essay on the economic, social and cultural right provided to the citizen of India in Indian Constitution.

Answer

1. Short Answer Questions

- a) *Article 1*
- b) Refer 4.3.2.3
- c) Refer 4.3.3.7
- d) Refer 4.3.3.7

2. Fill in the blanks

- a) universal standard
- b) December 16, 1966

3. True and false

- a) True
- b) False
- c) True

Terminal questions and model questions

1. Refer 4.3.1
2. Refer 4.3.2.3
3. Refer 4.3.3
4. Refer 4.3.5
5. Refer 4.3.6

UNIT 5

**CONVENTION ON THE ELIMINATION OF RACIAL
DISCRIMINATION**

5.1 LEARNING OUTCOME

5.2 5.2 UNDERSTANDING ‘RACIAL DISCRIMINATION’

5.3 THE HISTORY OF RACIAL DISCRIMINATION

5.3.1 RACIAL DISCRIMINATION IN GERMANY

5.3.2 RACIAL DISCRIMINATION IN SOUTH AFRICA

5.3.3 RACIAL DISCRIMINATION IN SOUTHERN RHODESIA

5.3.4 CASTE DISCRIMINATION IN INDIA

**5.4 RESERVATIONS TO THE CONVENTION ON THE PREVENTION AND
PUNISHMENT OF THE CRIME OF GENOCIDE (ADVISORY OPINION OF 28 MAY
1951)**

**5.4.1 THE INTERNATIONAL CONVENTION FOR THE ELIMINATION OF
ALL FORMS OF RACIAL DISCRIMINATION (CERD), 1965**

5.5 CONCLUSION

5.6 GLOSSARY

5.7 Suggested Readings

5.8 Short Answer Questions

5.9 Terminal Question

5.1 LEARNING OUTCOME

This module will elaborate on the meaning and scope of racial discrimination. It will provide a brief understanding of racial discrimination, its examples and the laws applicable to it. The major focus of the module is to elaborate on the international prohibition of racial discrimination through international convention and case laws. Critical analysis of the discussion follows.

5.2 UNDERSTANDING ‘RACIAL DISCRIMINATION’

Race as a concept has often been employed to classify human beings into different categories. This categorization is normally based upon colour, ethnicity, culture, religion and sometimes on the basis of even national origin. Thus, usually when we identify a person through any of the abovementioned gradients we are expected to be actually seeing him/her as part of a particular race. However, this is not as simple as it seems. The whole debate around ‘race’ has revolved around the perceptions of superiority and inferiority between the groups of people so classified. For instance, take the example of ‘white man’s burden’ theory. The Britishers ruled India with the perception that Indians constitute an inferior race and it is the responsibility of ‘white men’ to help them in their emancipation. Take another example, the Nazi government in Germany or the apartheid policy of South Africa. In both the situations the discrimination was based chiefly upon the perceptions of race based upon ethnicity. Who can forget the celebrated case of *Brown v. Board of Education of Topeka* the idea of segregating people and giving them differential treatment based upon the assumption that white and black constitute different races. On this assumption varying services were provided to fulfil their different needs, even to the extent of having different schools for the children.²

In normal parlance a discrimination based upon the perceptions of race constitutes racial discrimination. The questions then are - What constitute a race? How to define it? The legal literature has tried to evade defining the concept of ‘race’. The many international agreements and conventions have addressed issues of racial discrimination but without defining the term.³ In effect the efforts of the international community have been more to deal with the anathema of ‘race’ by limiting discriminations arising out of it, and without going into the debate as to what constitutes a race. Many scholars are of the view that perhaps defining the term is not needed.⁴ hence, efforts have been made to identify and address the issues of racial discrimination without actually going into the definition itself.

5.3 THE HISTORY OF RACIAL DISCRIMINATION

The history of racial discrimination is quite old. There have been times when race was recognized and accorded legal protection in many countries. The most pronounced instances of racial discrimination in the recent past came from Germany, South Africa and Southern Rhodesia. Let us have a brief glance over the forms of discrimination in these territories.

5.3.1 RACIAL DISCRIMINATION IN GERMANY

Anti-Semitism⁵ at its peak was seen under the Nazi regime in Germany. During the first six years of Hitler's dictatorship (i.e., 1933-1939), hundreds of decrees and regulations were passed restricting all aspects of public and private lives of Jews in Germany. The first major legislation in this regard was the Law for the Restoration of the Professional Civil Service, 1933 which

excluded Jews and other “politically unreliable” civil servants and employees from state service. A restriction was also imposed on the number of Jewish students in German schools & universities. In 1935 Nuremberg Laws were passed to exclude German Jews from Reich Citizenship. It prohibited them from marrying or having sexual relations with persons of “German or German related blood”. However, the more questionable part was the meaning of the term “Jew”. Under the first amendment to Nuremberg Laws, Jew was someone who had three or four Jewish grandparents as Jew, irrespective of whether the person identified himself/herself as a Jew.⁶

5.3.2 RACIAL DISCRIMINATION IN SOUTH AFRICA

In South Africa the racial policy of apartheid was applied by the government during the 1950s-60s. A number of laws were passed which gave preferential treatments to a particular section of the population. For instance, an African could not enter an urban area unless he had a pass, and could not stay there for more than 72 hours without a work permit. He did not have the right to establish his residence in an urban area unless he has lived there since birth or has worked there for an employer continuously for 10 years. Moreover, if the wife of an African worker in town wanted to visit him and stay there for more than 72 hours, she had to obtain a permit stating the reasons for her stay. A number of legislations were passed to give effect to such policies – The Group Areas Act and the Reservation of Separate Amenities Act, 1953 prevented members of different races from attending entertainments, cultural events, or even going to restaurants together. The Immorality Act, 1950 prohibited sexual relations between persons of different races; while the prohibition of Mixed Marriages Act, 1949 banned all marriages between Europeans and Non-Europeans.

5.3.3 RACIAL DISCRIMINATION IN SOUTHERN RHODESIA

In Southern Rhodesia although there was no general law which classified the population on the basis of race as in South Africa, there were a number of legislations that discriminated between different racial groups. The Land Apportionment Act, 1943 provided that half of the land was to be reserved for use by the white people who constituted only 6% of the population. The Master and Servant Act, 1901 provided that Africans could only go to towns to labour for White people and had to return back to their villages. Similarly, The Native (Registration and Identification) Act, 1957 and Africans (Urban Areas) Accommodation and Registration Act, 1946, provided for discrimination against the non-European groups of people.

5.3.4 CASTE DISCRIMINATION IN INDIA

The caste system in India is an ancient form of oppressive, hierarchical social organization that categorized people on the basis of their birth. Under the Brahminical system those who are not born within the major caste categories are recognized as ‘untouchable’ and prohibited from mixing with normal members of the society. Even when allowed to do so, they are treated as much inferior and given only the menial tasks of the society. The word Dalit, meaning ‘broken’ or ‘ground down’, is used by these people to describe themselves in terms of identity, oppression and the desire for emancipation. A 2006 study on untouchability in rural India covering 565 villages in 11 states has revealed the extent to which it continues to be the daily reality for millions of Indians.⁷ According to the study in 37.8% of the villages Dalits are made to sit separately in government schools; in 33% of the villages public health workers refuse to visit Dalit homes; in 12% of the villages Dalits are denied access to or forced to form

separate lines at polling booths; in 37% of the villages Dalit workers are paid wages from a distance to avoid physical contact; around 64% of Dalits are restricted from entering Hindu Temples; in almost 50% of the villages Dalits are prevented from accessing cremation grounds; in 73% of the villages Dalits are not permitted to enter non-Dalit homes; and in 70% of the villages Dalits and non-Dalits cannot eat together. In a similar account, according to the official Indian Crime Statistics, averaged over the period 2001-2005 about 27 atrocities are committed against. India submitted its latest report, which was already overdue for eight years (India submitted its 15th to 19th reports due in 1998, 2000, 2002, 2004 and 2006 together)⁹, to the United Nations Committee on the Elimination of Racial Discrimination (CERD) in February 2007.¹⁰ The report covered more than a decade of India's compliance with the Convention. It nevertheless did not contain a single mention of abuses against Dalits.¹¹ In its findings the Committee found that in India "de facto segregation of Dalits persists". It also highlighted the systematic abuse against Dalits for instance, torture & extra-judicial killings, sexual violence against Dalit women and caste discrimination. ¹² The Indian Government had been arguing that 'Caste' fell outside the scope of CERD, since as far back as 1996. However, in its concluding observations "the Committee reaffirm[ed] that discrimination based on the ground of caste is fully covered by article 1 of the Convention". It cited its position expressed in General Recommendation No. 29, "that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights".¹³ Based upon these observations, the Committee asked India, inter alia, to:

1. Introduce mandatory training on the application of India's Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act for police, judges and prosecutors;
2. Ensure the protection of witnesses and victims to caste-based crimes and ensure their immediate access to effective remedies;
3. Prosecute and punish perpetrators of sexual violence and sexual exploitation of Dalit women;
4. Eradicate the social acceptance of caste-based discrimination through public education and awareness campaigns;
5. Repeal the Armed Forces Special Powers Act which provides widespread powers and immunities to the members of the armed forces.

5.4 THE LEGAL FRAMEWORK FOR THE ELIMINATION OF RACIAL DISCRIMINATION

The most pronounced document for limiting the effects of racial discrimination is the International Convention for the Elimination of All Forms of Racial Discrimination (CERD), 1965. Though there are other regional instruments that address the issue of discrimination on the basis of race¹⁴, but for the purpose of present discussion CERD should be our main focus for it is the most important and elaborate instrument addressing the issue.

5.4.1 THE INTERNATIONAL CONVENTION FOR THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD), 1965

The International Convention on the Elimination of All Forms of Racial Discrimination, 1965 exclusively deals with the issues of racial discrimination, and is one of the most accepted of all the human rights conventions.¹⁵ The Convention tends to treat 'ideas

or theories of superiority of one race or group of persons of one colour or ethnic origin' as the main source or cause of racial discrimination. It defines racial discrimination in Article 1(1) as

“...the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The Convention does not make an express reference to Anti-Semitism, nor does it mention other forms of racism except Apartheid, which is addressed in Article 3 and the Preamble. Sometimes the expressions of discrimination on ethnic grounds are closely related with discrimination on religious grounds; the Convention however, does not address the latter. In order to enforce the standards recognized by the Convention, Article 8 provides for the establishment of a Committee on Elimination of Racial Discrimination. The Committee is comprised of eighteen experts coming from different nationalities and serving in their individual capacity. The Member States have to submit every two years a report to the Committee updating it with the steps they have taken to curb racial discrimination in their respective territories.¹⁶ The Committee is given the supervisory power to look after the implementation of the treaty which authorizes action by the Committee in three ways – Nation v. Nation disputes, Citizen v. Nation disputes and submission of reports to the General Assembly.

- i. Nation v. Nation Disputes (Article 11): In Nation v. Nation disputes one of the State Parties to the Convention advises the Committee about the violation of treaty provisions by another State Party. The Committee then asks the State complained against for submission of written explanations or statements, which is then communicated to the complaining party. If however, the matter is not adjusted to the satisfaction of both the parties, any one of them can refer back the matter to the Committee. The Committee then has the power to appoint Ad-Hoc Conciliation Commission with the unanimous consent of the parties. If this is not possible then the members of the commission are elected by secret ballot by 2/3 majority vote of the Committee members.
- ii. Citizen v. Nation Disputes (Article 14): A State Party may recognize the competency of the Committee to receive and consider complaints by individuals or group of individuals concerning racial discrimination. If it does so it allows an international tribunal to take action on the complaints of individuals who are within its jurisdiction. In a manner the Convention hence creates an Ombudsman for racial discrimination, where ex-officio experts have the power to investigate and criticize what the governments do about racial discrimination. This is quite similar to the functioning of the European Court of Human Rights.
- iii. Reporting to the General Assembly (Article 9): Every State has to submit a report every two years on the legislative, judicial, administrative or other measures that it has adopted for giving effect to the provisions of the Convention. The Committee then reports annually through the Secretary General to the General Assembly of its activities based upon which it can also make suggestions or general recommendations.

5.4.1 SELECTED CASES

5.4.1.1 Cases before the Committee on Elimination of Racial Discrimination

For illustrative purposes the following cases can be discussed-

a. Yilmaz-Dogan v. Netherlands, Communication No. 1/1984

Submission: Mrs. A. Yilmaz-Dogan, a Turkish national residing in the Netherlands claimed to be the victim of violation of articles 4 (a) [dissemination of ideas based on racial superiority or hatred]¹⁷, 5 (e) (i) [protection of the right to work]¹⁸ and 6 [effective protection and remedies through State institutions]¹⁹ of the International Convention on the Elimination of All Forms of Racial Discrimination by the Netherlands.

Facts: Mrs. Yilmaz was employed by a firm operating in the textile sector since 1979. On 3 April 1981, she was injured in a traffic accident and placed on sick leave. As a result of the accident, she was unable to carry out her work for a long time. Hence, she could resume part-time duty only by 1982. Meanwhile, in August 1981, she married Mr. Yilmaz. By a letter dated 22 June 1982, her employer requested permission from the District Labour Exchange to terminate her contract. Mrs. Yilmaz was pregnant at that time. On 14 July 1982, the Director of the Labour Exchange refused to terminate the contract on the basis of the law which did not allow employment contracts to be terminated during the pregnancy of the employee. The employer subsequently went before the competent Court making the following observation:

“When a Netherlands girl marries and has a baby, she stops working. Our foreign women workers, on the other hand, take the child to neighbours or family and at the slightest setback disappear on sick leave under the terms of the Sickness Act. They repeat that endlessly. Since we all must do our utmost to avoid going under, we cannot afford such goings-on.”

After hearing the request of the employer the Court agreed, and by a decision of 29 September 1982, terminated the employment contract with effect from 1 December 1982.

Held: The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention found that the petitioner (Mrs. Yilmaz) was not afforded protection in respect of her right to work. It suggested that the State party take this into account and should ascertain that Mrs. Yilmaz-Dogan was provided with proper employment.

b. B.J. v. Denmark, Communication No. 17/1999

Submission: Mr. B.J. was a Danish engineer of Iranian origin. He claimed to be a victim of violations by Denmark of Article 2 (1) (a), (b) and (d) [State parties to condemn racial discrimination through policy making]²⁰, Article 5 (f) [right to access places of public use]²¹ and Article 6 [effective protection and remedies through institutions]²² of the Convention.

Facts: The author lived in Denmark since 1984 and had Danish nationality. On 1 February 1997 he went to a discotheque with his brother and a group of friends. Two of them were of Danish origin and four were not. The doorman of the discotheque refused to let them in. When asked the reason he replied that it was because they were “foreigners”.

Held: There was no violation of article 6 of the Convention by the State party. The Committee, however, recommended that the State party should take measures necessary to ensure that proper compensation is provided in such cases.

5.4.1.2 Cases before the International Court of Justice- The only case that has come up before the ICJ concerning the interpretation of CERD is the following:

a. Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), 2008 ICJ 140

Submission: It was contended by Georgia that Russia Federation engaged in acts of ethnic cleansing in its territory in complete violation of Articles 2, 3, 4, 5 and 6 of the Convention against Racial Discrimination. The violation of the provisions of the Convention in relation of the use of force was attracted for the first time.

Facts: During the period of conflict from 1991-2008, Russia was charged of committing human rights violations based in ethnicity.

Held: The ICJ held that it did not have jurisdiction under Convention on Elimination of Racial Discrimination to give a judgment on merits. It also observed that Article 22 of the Convention requires the parties to attempt a negotiated settlement before proceeding to adjudication, which the parties did not resort to.

5.5 CONCLUSION

There are some defects from which the machinery set up by the Convention to eliminate racial discrimination suffers with. First, since the Convention permits for reservation most of its effect is watered down. The reservations made by the States concern mainly with the authority of the International Court of Justice to settle disputes between them. Moreover, in cases where a person is discriminated against he is in need of an international machinery to come to his rescue in cases where his own State is not taking any steps. With reservation made by the States this however becomes impossible. Second, Article 14(1) provides that complaints from individual victims may not be received by the Committee unless the State party recognizes the competence of the Committee. In such cases an individual cannot complain if his State has not acceded to the competence of the Committee. The only remedy available to him is to get another State to make a complaint against his government, which is most unlikely to happen. Third, the Committee has not been provided with any investigative or fact-finding power under Articles 11 and 12. In the absence of such powers it is not possible for the Committee to carry out its functions in the manner required of.

In order to bring some solutions at the level of United Nations, the Secretary General endorsed the establishment of a United Nations Network on racial discrimination and protection of minorities.²³ In 2013, he came up with a guidance note on racial discrimination which made a total of 19 recommendations including integrating minority rights and promoting diversity within the UN system.

Below is a set of academic components suitable for the unit “**Convention on the Elimination of Racial Discrimination**” (based on the International Convention on the Elimination of All Forms of Racial Discrimination – ICERD).

5.6 GLOSSARY

1. **Racial Discrimination** – Any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin that impairs the enjoyment of human rights.

2. **Equality** – The principle that all persons are entitled to equal rights and opportunities without discrimination.
3. **Non-Discrimination** – The prohibition of unfair treatment on prohibited grounds such as race or ethnicity.
4. **ICERD** – International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the United Nations in 1965.
5. **CERD Committee** – The Committee on the Elimination of Racial Discrimination established to monitor the implementation of ICERD.
6. **Segregation** – The separation of individuals or groups based on racial or ethnic identity.
7. **Apartheid** – A system of institutionalized racial segregation and discrimination.
8. **State Party** – A country that has ratified or acceded to the Convention and is legally bound by its provisions.
9. **Human Dignity** – The inherent worth and equal value of every human being.
10. **Remedy** – Legal or administrative measures available to victims of racial discrimination.

5.7 Suggested Readings

1. United Nations. *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, 1965.
2. Malcolm N. Shaw, *International Law*, Cambridge University Press.
3. Henry J. Steiner, Philip Alston & Ryan Goodman, *International Human Rights in Context*, Oxford University Press.
4. Rhona K. M. Smith, *Textbook on International Human Rights*, Oxford University Press.
5. H.O. Agarwal, *Human Rights*, Central Law Publications.

5.8 Short Answer Questions

1. Define racial discrimination under ICERD.
2. When was the ICERD adopted by the United Nations?
3. What are the main objectives of ICERD?
4. What is the role of the CERD Committee?
5. What is meant by racial segregation?

5.9 Terminal Questions

1. Discuss the objectives, scope, and significance of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).
2. Examine the obligations of States Parties under ICERD to eliminate racial discrimination.
3. Explain the role, functions, and reporting procedure of the Committee on the Elimination of Racial Discrimination (CERD).
4. Critically evaluate the effectiveness of ICERD in combating racial discrimination at the international level.
5. Discuss the relationship between ICERD and other international human rights instruments in promoting equality and non-discrimination.

UNIT 6

**CONVENTION AGAINST TORTURE AND OTHER
CRUEL TREATMENT**

6.1 INTRODUCTION

6.2 OBJECTIVES

6.3 CONVENTION AGAINST TORTURE

6.3.1 DEFINITION AND SCOPE

6.3.2 PROHIBITION AND MEASURES

6.3.3 MONITORING AND REPORTING

6.4 IMPLEMENTATION AND COMPLIANCE

6.4.1 NATIONAL LEGISLATION

6.4.2 INTERNATIONAL OVERSIGHT

6.5 CHALLENGES AND CRITICISM

6.5.1 ENFORCEMENT ISSUES

6.5.2 EMERGING CONCERNS

6.6 SUMMARY

6.7 GLOSSARY

6.8 SAQS

6.9 WORKSHEET BASED ON THE SLM

6.9.1 TRUE/FALSE

6.9.2 FILL IN THE BLANKS

6.9.3 ONE-LINE ANSWER QUESTIONS

6.9.4 VERY SHORT ANSWER QUESTIONS

6.10 SHORT ANSWER QUESTIONS (SAQS)

6.11 TERMINAL AND MODEL QUESTIONS

6.12 REFERENCES/BIBLIOGRAPHY

6.13 SUGGESTED READINGS & WEBLINKS

6.1 INTRODUCTION

As a postgraduate student studying human rights, understanding the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** is crucial. Torture is one of the most severe violations of human dignity, and the CAT, adopted by the **United Nations General Assembly** in 1984 and coming into force in 1987, is a key international treaty aimed at addressing and eliminating this grave violation.

6.1.1 WHY WAS CAT CREATED?

Imagine living in a world where governments could legally subject people to extreme pain and suffering without any consequences. This was a reality in many parts of the world before global efforts led to the creation of treaties like CAT. The international community recognized that **torture** and **inhumane treatment** were not only morally unacceptable but also a violation of fundamental human rights. CAT was born out of this global awareness and the need for a legal framework to **prevent** and **punish** acts of torture.

The **Convention** does not allow torture under any circumstances, whether in times of war, political instability, or for reasons of national security. This principle is often referred to as "**absolute prohibition**", meaning that no justification—no matter how compelling—can make torture acceptable.

6.1.2 HISTORICAL BACKGROUND: THE GLOBAL STRUGGLE AGAINST TORTURE

To understand the significance of CAT, it is essential to consider the historical context in which the Convention emerged. Torture has long been used as a method of punishment, coercion, and control by governments, militaries, and other entities throughout history. In ancient and medieval times, torture was often considered a legitimate method of extracting confessions, punishing wrongdoers, or imposing political order. The **Roman Empire**, for example, utilized various forms of torture as a legal means to extract confessions or punish criminals, especially slaves and those considered lower in societal status.

The use of torture continued into the modern period, often linked with colonialism, wars, and authoritarian regimes. However, the **18th century Enlightenment** brought significant philosophical shifts in thinking about human rights and dignity. Thinkers like **Cesare Beccaria** and **Voltaire** advocated against torture, leading to its abolition in many Western legal systems by the early 19th century. Despite these advances, the **20th century** witnessed a resurgence in state-sanctioned torture, particularly during the **World Wars**, colonial conflicts, and authoritarian rule in several parts of the world.

The horrors of **World War II**, including the systematic torture and extermination of millions during the Holocaust, prompted the creation of new international legal frameworks aimed at preventing such atrocities from happening again. The Universal Declaration of Human Rights (UDHR), adopted in 1948, was a direct response to these events and marked a turning point in international human rights law. Article 5 of the UDHR states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." This laid the foundation for the development of subsequent treaties, including CAT.

By the 1970s and 1980s, the international community recognized the need for a specific, legally binding instrument that would address the issue of torture directly. The widespread use of torture in conflicts and authoritarian regimes, such as in **Latin America** under Operation Condor, or in various African and Asian dictatorships, underscored the necessity of a

comprehensive international treaty. In response, the United Nations adopted CAT in **1984**, with the aim of establishing clear obligations for state parties to prevent and address acts of torture.

6.2 OBJECTIVES

The objectives of this material are multifaceted, aiming to provide a comprehensive understanding of the Convention against Torture.

First, this course seeks to **understand the fundamental principles and definitions established by the Convention**, including key terms such as "torture," "cruel, inhuman or degrading treatment," and other relevant legal concepts. This understanding will form the foundation for grasping the scope and application of the Convention across various legal systems.

Second, the material will explore the obligations of states parties under the Convention, focusing on the specific legal, administrative, and procedural measures they must implement to prevent, investigate, and punish acts of torture. This will include an analysis of national legislation and judicial practices required to align with international norms, as well as the obligation to provide remedies and reparations for victims.

Third, this course will analyse the mechanisms for monitoring and reporting on compliance with the Convention. This includes a detailed examination of the role of the Committee against Torture, periodic state reports, individual complaints procedures, and the optional protocol. The effectiveness and limitations of these mechanisms will also be assessed, with a focus on transparency, accountability, and international cooperation.

Finally, the course will evaluate the challenges and criticisms associated with the implementation of the Convention, addressing issues such as non-compliance by states, lack of enforcement, and the impact of political, social, and economic factors. It will also explore the debates surrounding the universality of the Convention and how differing interpretations of its provisions affect global efforts to eradicate torture.

6.3 CONVENTION AGAINST TORTURE

6.3.1 Definition and Scope

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) provides a clear and comprehensive definition of torture, which forms the foundation of the treaty's prohibitions and legal obligations. The definition encapsulates the intentional infliction of severe physical or mental pain or suffering on an individual for specific purposes, including the extraction of information, punishment, intimidation, or coercion. The act of torture, as per the Convention, must also be linked to state action or authority.

6.3.1.1 MAIN ELEMENTS OF THE DEFINITION

1. Intentional Infliction of Severe Pain or Suffering

The first element of the definition is the requirement that torture involves the intentional infliction of pain or suffering. This means that the act must be deliberate and not accidental. The severity of the pain or suffering is also a crucial element, distinguishing torture from less severe forms of ill-treatment. Both physical and mental suffering are included in the definition, acknowledging that torture can have devastating psychological as well as physical effects.

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- Physical pain refers to any form of bodily harm, such as beatings, electric shocks, burnings, or other forms of physical injury inflicted on the victim.
- Mental suffering encompasses actions that cause severe emotional or psychological distress, such as prolonged solitary confinement, threats to the individual's life or the lives of loved ones, mock executions, or deprivation of sleep, food, or water. Mental forms of torture are sometimes harder to identify, but the Convention recognizes their profound and lasting impact on the victim.

The requirement for the pain or suffering to be severe is crucial. It sets a threshold, meaning that minor or trivial acts of discomfort do not meet the definition of torture. However, acts that cause long-term psychological trauma or significant physical harm are considered to fall under the definition.

2. Purposes of Torture

The definition under CAT emphasizes that the infliction of pain or suffering must be for a specific purpose. The Convention lists several potential purposes, which include but are not limited to:

- a) **Obtaining information or a confession:** Torture is often used as a tool to extract information from individuals or force confessions to crimes, even when those confessions may be false. For example, state agents might torture a suspect to force them to reveal information about a crime or terrorist activity. Such practices are strictly prohibited under international law, as coerced confessions are often unreliable and violate fundamental human rights.
- b) **Punishment:** Torture can be used as a form of punishment for perceived wrongdoing. This could include punishing someone for a crime they have committed, or punishing them for political dissent, activism, or association with opposition groups. The use of torture as punishment is common in authoritarian regimes where political prisoners, journalists, or activists are targeted.
- c) **Intimidation or coercion:** Torture is frequently employed as a method to intimidate or coerce individuals or groups. This could involve using torture to silence opposition, instill fear in a community, or force someone into submission. In some cases, the threat of torture alone can achieve the desired effect, demonstrating the psychological power that torture wields even when it is not physically applied.

These purposes highlight the coercive nature of torture. Whether the aim is to obtain information, punish, or intimidate, torture is inherently about imposing the will of the torturer on the victim, stripping the individual of their autonomy and dignity.

3. Involvement of a Public Official or Person Acting in an Official Capacity

For an act to qualify as torture under the Convention, it must be committed by, or with the involvement of, a public official or someone acting in an official capacity. This requirement reflects the state responsibility that is central to CAT. The involvement of the state distinguishes torture from other forms of violence, such as private acts of cruelty or abuse, which, while still illegal, fall under different legal frameworks.

- a) **Direct involvement of a public official:** Torture might be carried out directly by police officers, military personnel, prison guards, or other state agents. These individuals, acting in their official capacity, use their authority to commit acts of torture, often with the backing or implicit approval of the state.

- b) **Instigation or acquiescence:** Even if a public official does not directly inflict the pain or suffering, they may still be held accountable if they instigate or acquiesce to the act. This includes situations where officials allow torture to occur, fail to prevent it, or turn a blind eye to its occurrence. For example, if a prison warden knows that detainees are being tortured but does nothing to stop it, they can be held liable under the Convention.

The inclusion of this element ensures that states cannot escape responsibility by outsourcing torture to private actors or denying direct involvement. The principle of state accountability is central to CAT, making governments responsible for preventing torture and ensuring that those who commit it, whether directly or indirectly, are prosecuted.

4. Distinction from Lawful Sanctions or Punishments

The Convention makes a clear distinction between acts of torture and lawful sanctions or punishments that are permitted by national or international law. This distinction is important to ensure that legitimate legal processes, such as sentencing a person to imprisonment for a crime, are not mischaracterized as torture.

However, lawful punishments must themselves be humane and respect international human rights standards. For example, the death penalty, while legal in some countries, must be carried out in a manner that does not involve cruel, inhuman, or degrading treatment. Similarly, corporal punishment or excessively harsh prison conditions that cause severe physical or mental suffering can cross the line into torture, even if technically sanctioned by domestic law.

5. Prohibition of Torture in All Circumstances

One of the most important aspects of the Convention's definition of torture is its absolute prohibition. The Convention emphasizes that no exceptional circumstances can justify the use of torture, whether in times of war, internal political instability, or any other public emergency. This absolute prohibition sets CAT apart from other legal frameworks that may allow certain rights to be derogated in times of emergency. Torture is never justified, regardless of the perceived threat or the goals of those in power.

The absolute prohibition is reaffirmed in international case law. In *A. v. United Kingdom* (2006), the European Court of Human Rights ruled that national security concerns cannot justify torture, establishing a powerful precedent that torture cannot be excused under any circumstances.

The definition of torture under the Convention against Torture is detailed and comprehensive, emphasizing the intentionality, severity, and state involvement necessary to categorize an act as torture. By including both physical and mental suffering, and by setting clear limits on the purposes for which such suffering can be inflicted, the Convention provides a robust legal framework to prevent and address torture globally.

6.3.2 SCOPE OF THE CONVENTION

The Convention against Torture (CAT) encompasses a comprehensive and universally applicable framework designed to prevent and prohibit torture in all forms. It establishes an unequivocal and absolute ban on torture, irrespective of the situation, including times of war, internal political upheaval, or states of emergency. This prohibition is binding under all circumstances and applies to every individual, without discrimination based on nationality, status, or any other factor.

For states that have ratified the Convention, it imposes a range of specific legal and practical obligations. Firstly, states must take effective measures to prevent acts of torture

within their jurisdiction. This includes enacting laws and policies that explicitly prohibit torture, as well as ensuring robust training for law enforcement, military personnel, and any others who may be involved in the detention or treatment of individuals.

Secondly, the Convention mandates that states thoroughly investigate and prosecute individuals who are accused of committing torture. This ensures that perpetrators do not enjoy impunity and that justice is pursued for all victims of such crimes. Furthermore, the Convention obliges states to provide legal avenues and support for victims of torture, including access to rehabilitation programs that address both the physical and psychological consequences of torture.

In addition, the CAT requires that anti-torture legislation be integrated into domestic legal systems of states parties. This ensures that the prohibition against torture is not merely a theoretical commitment but is enforceable at the national level. States are also obligated to cooperate with one another in cases involving extradition of individuals accused of torture, making it harder for torturers to escape accountability by fleeing to other countries.

Another important aspect of the Convention is the requirement for states parties to submit regular reports to the UN Committee against Torture. These reports provide updates on the measures taken to comply with the Convention, including any challenges faced in its implementation. The Committee reviews these reports, offering recommendations and guidance to ensure the ongoing effectiveness of the Convention's provisions.

Importantly, the Convention makes it clear that no exceptional circumstances—such as national security threats, public emergencies, or any other justification—can be used to excuse or justify acts of torture. The prohibition is unconditional and cannot be suspended, solidifying it as one of the most deeply rooted principles in international human rights law.

6.4 PROHIBITION AND MEASURES

6.4.1 Absolute Prohibition

The Convention Against Torture establishes an absolute, non-derogable prohibition on the use of torture, which applies universally without exception. This prohibition holds even during states of emergency, political instability, or armed conflict. For instance, Article 2 of the Convention states, "No exceptional circumstances whatsoever, whether a state of war, a threat of war, internal political instability, or any other public emergency, may be invoked as a justification of torture." A real-world illustration of this is the 2006 ruling of the European Court of Human Rights (ECHR) in *A. v. the United Kingdom*, where the court upheld that the absolute prohibition on torture cannot be overridden by claims of national security or terrorism concerns.

6.4.2 Preventive Measures

States that are party to the Convention are obligated to implement effective legislative, administrative, and judicial measures to prevent acts of torture. These measures may include criminalizing torture under national law, ensuring that law enforcement and security personnel are adequately trained to avoid engaging in or tolerating acts of torture, and establishing independent monitoring mechanisms such as national human rights institutions or ombudspersons. For example, many countries have set up "National Preventive Mechanisms" (NPMs) as required by the Optional Protocol to the Convention against Torture (OPCAT), which conduct unannounced visits to detention centres to prevent torture.

6.4.3 Redress for Victims

The Convention mandates that victims of torture must be provided with an effective remedy, including compensation and rehabilitation services. This can include financial compensation, as well as medical and psychological support to help victims recover from the trauma of torture. For instance, in the *Case of Loayza Tamayo v. Peru* (1997), the Inter-American Court of Human Rights ordered Peru to provide medical treatment and rehabilitation to the victim, along with monetary compensation, following her unlawful detention and torture by state officials.

These measures collectively aim to ensure that torture is not only prohibited but also effectively prevented, and that victims are adequately supported in their recovery.

6.4.4 MONITORING AND REPORTING

6.4.4.1 Committee against Torture (CAT)

The Convention against Torture establishes the Committee against Torture (CAT) as its monitoring body, responsible for overseeing the implementation of the Convention by its state parties. The CAT is tasked with reviewing periodic reports submitted by countries, ensuring that the measures taken to prevent torture and address cases of torture are in line with the Convention's provisions. It also conducts inquiries and country visits to assess compliance with the Convention. For instance, the CAT may intervene in countries where there are consistent allegations of widespread or systematic torture.

6.4.4.2 Reporting Obligations

States parties are required to submit initial reports within one year of becoming a party to the Convention, and thereafter, regular periodic reports. These reports must detail the legal, administrative, and other measures the state has adopted to prevent and punish acts of torture. For example, countries like **India** have submitted their periodic reports, outlining various legislative actions such as the Protection of Human Rights Act, 1993, and judicial interventions to safeguard against torture. In **Brazil**, reports have highlighted legal reforms and oversight mechanisms to prevent torture in prisons. On the other hand, **Germany** has emphasized preventive measures such as extensive training for law enforcement officials and creating independent oversight bodies for monitoring detention facilities.

When countries fail to submit their reports or are found to be non-compliant, the CAT can request further information or conduct in-depth inquiries. In severe cases, such as **Turkey** during specific political crises, the CAT has sent teams to investigate allegations of torture, highlighting the role of international scrutiny in ensuring adherence to human rights standards.

6.5 IMPLEMENTATION AND COMPLIANCE

In the global context of law, implementation and compliance of international agreements and obligations are crucial to ensure that the principles and norms enshrined in these agreements are effectively applied within a country's domestic legal framework. This is particularly relevant in areas such as environmental law, human rights, and trade, where international commitments need to be integrated into national laws. This topic will explore the mechanisms of implementation and compliance through national legislation, which serve as a bridge between international law and domestic enforcement.

6.5.1 NATIONAL LEGISLATION

National legislation refers to the body of laws enacted by a sovereign nation's government to ensure that international commitments are fulfilled and complied with within

the nation's borders. It is the domestic legal framework that allows a country to operationalize its obligations under international treaties, conventions, and agreements.

a) Incorporation into Domestic Law

States parties are obligated to incorporate the principles of the Convention Against Torture (CAT) into their national legal systems. This includes ensuring that domestic laws reflect the Convention's prohibition of torture in all its forms. Many countries have taken steps to revise or enact specific laws that criminalize torture, provide clear definitions, and outline penalties. For example, in 2022, **South Africa** enacted reforms to strengthen its anti-torture legislation following domestic and international advocacy. The law now provides more comprehensive definitions of torture and mandates stronger victim protection mechanisms. The incorporation process must also establish mechanisms for redress and accountability, ensuring victims have access to effective remedies, such as compensation or rehabilitation.

b) Implementation Mechanisms in National Legislation

1. **Regulatory Agencies:** Governments often establish specific agencies or bodies responsible for overseeing the implementation of laws derived from international treaties. For example, environmental agencies oversee compliance with international environmental protocols such as the Kyoto Protocol.
2. **Judicial and Administrative Oversight:** Courts and administrative bodies play a critical role in interpreting and enforcing national legislation derived from international agreements. To ensure compliance, effective legal and administrative frameworks must be in place to prevent and address torture. These measures include mandatory training programs for law enforcement, judiciary, and prison personnel on the rights of individuals and the prohibition of torture. For example, **Germany** has implemented specific training for police officers on human rights and torture prevention, which has been recognized as a model by the European Court of Human Rights (ECHR). These judicial and administrative measures are crucial in ensuring that torture is not practiced under the guise of security or interrogation. In 2023, **Kenya** introduced reforms to improve oversight in detention centres, particularly in counterterrorism operations, ensuring compliance with international standards.
3. **Penalties and Sanctions:** National legislation often includes penalties, fines, or other sanctions for non-compliance. This could range from financial penalties to imprisonment, depending on the severity of the breach.

6.5.2 INTERNATIONAL OVERSIGHT

a) Universal Jurisdiction

The Convention allows for the application of universal jurisdiction, enabling states to prosecute individuals accused of torture, regardless of where the acts occurred. This provision ensures that perpetrators of torture cannot escape justice simply by crossing borders. Recent examples of this principle include **Germany's 2021 prosecution of Syrian officials** accused of committing acts of torture during the Syrian Civil War. The landmark case, tried under the principle of universal jurisdiction, was hailed as a significant step in international accountability for human rights violations. Similarly, **Argentina** has recently invoked universal jurisdiction to investigate allegations of torture committed by Saudi officials during the Yemen conflict, further highlighting the importance of this mechanism.

b) International Cooperation

International cooperation is vital to effectively combat torture. States parties are encouraged to work together through extradition treaties, mutual legal assistance, and sharing best practices. For instance, in 2023, **European Union (EU) member states** collaborated with the United Nations Office of the High Commissioner for Human Rights (OHCHR) in a project aimed at harmonizing national anti-torture legislation with international norms. Additionally, international bodies such as the **UN Committee Against Torture** regularly conduct reviews of states' compliance and offer recommendations, as seen in their 2023 report on **Brazil**, which identified areas for improvement and encouraged enhanced cooperation with neighboring countries to address cross-border human rights violations.

6.6 CHALLENGES AND CRITICISMS

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) has made significant strides in promoting human rights by establishing a global framework for the prevention of torture and ensuring accountability for such violations. However, challenges and criticisms persist. One major challenge is the inconsistent implementation of the Convention's provisions by signatory states, with many failing to incorporate its standards into national legislation or provide adequate safeguards. Additionally, enforcement mechanisms remain weak, as the CAT largely relies on state cooperation for investigations and prosecutions. Critics also highlight issues such as the limited scope of reparations for victims and the ongoing use of torture in some countries despite their commitment to the treaty.

6.6.1 ENFORCEMENT ISSUES

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment has made significant strides in promoting human rights. However, its implementation faces numerous challenges and criticisms that hinder its effectiveness. Key issues include enforcement gaps, accountability failures, and emerging concerns such as psychological forms of torture. Additionally, political resistance from certain states further impairs global progress. These obstacles emphasize the need for enhanced commitment and international cooperation to strengthen the Convention's enforcement mechanisms and adapt to evolving forms of ill-treatment.

6.6.2 IMPLEMENTATION GAPS

Despite the Convention's robust legal framework, many countries struggle with full and consistent enforcement. This can be attributed to:

- a) Inadequate or outdated national legislation that does not align with international standards.
- b) Lack of political will to prioritize the Convention's provisions.
- c) Insufficient resources and funding, particularly in developing nations, to ensure effective implementation.

In some regions, reports from human rights organizations highlight that legal frameworks against torture are present but remain unenforced due to insufficient political will, such as in parts of Southeast Asia and Africa, where local governments often prioritize stability over human rights enforcement.

6.6.3 IMPUNITY AND ACCOUNTABILITY

One of the major criticisms of the Convention is the persistent culture of impunity. This occurs when:

- a) Perpetrators of torture, including state officials or security forces, are not effectively prosecuted.
- b) Corruption and weak judicial systems hinder investigations and accountability.

In countries like Myanmar and Venezuela, despite global attention on violations, there has been a reluctance to prosecute government officials responsible for widespread torture, reflecting ongoing impunity.

6.6.4 EMERGING CONCERNS

6.6.4.1 New Forms of Ill-Treatment

The Convention, drafted decades ago, faces challenges in addressing modern and more nuanced forms of torture, such as:

- a) Psychological torture, including prolonged solitary confinement, cyberbullying, or forced indoctrination, which is harder to identify and prosecute.
- b) Torture in new contexts, like in digital surveillance or cyber-related abuses, which were not fully anticipated during the drafting of the Convention.

Reports on the treatment of political prisoners in Belarus and the digital surveillance methods in China against Uyghur minorities show the complexity of modern psychological torture.

6.6.4.2 STATE RESISTANCE

Some states may resist fully implementing the Convention's provisions due to:

- a) Political or strategic reasons, such as maintaining control over dissenting populations.
- b) Viewing human rights as secondary to national security concerns, leading to incomplete or selective adherence to the Convention.

In Egypt and Saudi Arabia, national security is frequently cited to justify harsh treatment of political detainees, despite international criticism and obligations under the Convention.

6.7 SUMMARY

The Convention against Torture represents a crucial international commitment to prohibiting and addressing torture and ill-treatment in all forms. It establishes a comprehensive legal framework with clear definitions of torture, obligations for states parties to prevent, investigate, and prosecute acts of torture, and mechanisms for monitoring compliance through periodic reporting and independent oversight. The Convention underscores the absolute and non-derogable nature of the prohibition against torture, reinforcing its universal applicability under international law.

Despite its broad mandate, the Convention faces significant challenges in achieving full enforcement and adaptation to evolving concerns. One such challenge is the emergence of new forms of torture, such as psychological and cyber-related ill-treatment, which may not be adequately addressed by traditional interpretations of the Convention. Additionally, practices in non-traditional contexts, such as in conflict zones, migration detention centres, and within cyberspace, create further complexities in ensuring effective protection against all forms of ill-treatment.

State resistance also poses a considerable hurdle. Certain states may resist fully implementing the provisions of the Convention due to political, strategic, or economic interests. This resistance can weaken the global effort to eradicate torture and hinder the effective operation of international monitoring mechanisms, such as the Committee Against

Torture and Special Rapporteurs. In some cases, states may engage in acts of torture under the guise of national security, counter-terrorism, or emergency measures, further complicating enforcement.

To address these challenges, ongoing efforts are required to strengthen the Convention's effectiveness. This includes enhancing international cooperation, ensuring more robust mechanisms for accountability, and adapting the legal framework to cover emerging forms of ill-treatment. Ultimately, the Convention remains a cornerstone in the global fight against torture, but its success relies on the continued commitment of the international community to uphold and expand its principles.

6.8 GLOSSARY

- **Torture:** Severe pain or suffering inflicted intentionally for purposes such as obtaining information or punishment, committed by or with the consent of a public official.
- **Committee Against Torture (CAT):** A UN body responsible for monitoring compliance with the Convention against Torture.
- **Universal Jurisdiction:** The principle that allows states to prosecute individuals for certain crimes, like torture, regardless of where they occurred.

6.9 SAQ

6.9.1 True/False

1. The Convention against Torture was adopted by the UN General Assembly in 1987. **(False)**
2. Torture is allowed in times of war under the Convention against Torture. **(False)**
3. Mental suffering is recognized as a form of torture under the Convention. **(True)**
4. The CAT prohibits torture under all circumstances without exception. **(True)**
5. Only public officials can commit acts of torture according to the CAT. **(False)**
6. The Convention against Torture includes both physical and psychological forms of suffering. **(True)**
7. The CAT requires countries to submit periodic reports about their compliance. **(True)**
8. States can use national security as an excuse for acts of torture under the CAT. **(False)**
9. The principle of non-refoulement prohibits returning individuals to places where they may face torture. **(True)**
10. The CAT allows certain forms of torture for extracting important information. **(False)**

6.9.2 FILL IN THE BLANKS

1. The ----- was adopted by the United Nations in 1984.
2. The Convention establishes an absolute -----of torture in all circumstances.
3. States must submit periodic ----- to the Committee Against Torture.
4. ----- forms of torture include prolonged solitary confinement.
5. The ----- inspired the creation of the CAT.
6. Torture is an intentional infliction of severe pain or suffering, both ----- and-----.

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7. The Convention requires states to enact----- to prevent torture.
8. -----are key obligations of states under the CAT.
9. The Convention emphasizes the role of -----in acts of torture.
10. ----- for torture remains a challenge in many countries despite the CAT.

Answer Key

1. Convention Against Torture
2. Prohibition
3. Reports
4. Psychological
5. Universal Declaration of Human Rights
6. physical; mental
7. National legislation
8. Monitoring and reporting
9. public officials
10. Impunity

6.9.3 VERY SHORT ANSWER QUESTIONS

1. What is the main purpose of the Convention against Torture?

To prevent, prohibit, and ensure accountability for acts of torture worldwide.

2. What are the obligations of states under the Convention against Torture?

States must prevent torture, investigate allegations, prosecute perpetrators, provide remedies to victims, and submit periodic reports.

3. Explain the concept of "absolute prohibition" under the CAT.

The absolute prohibition means that torture is never allowed, regardless of circumstances such as war or national security concerns.

4. What forms of suffering are recognized as torture under the Convention?

Both physical and mental suffering, such as beatings, electric shocks, and psychological torture, are recognized under the Convention.

5. What is the role of public officials in acts of torture under the CAT?

Torture is generally carried out by public officials or individuals acting in an official capacity, making the state accountable.

6. What are some challenges in enforcing the CAT?

Challenges include inconsistent national legislation, lack of political will, resource constraints, and cultural norms that may support torture.

7. What are the preventive measures required by the CAT?

The CAT requires states to enact legislation, train law enforcement, establish monitoring mechanisms, and provide rehabilitation to victims.

8. What are the reporting obligations of states under the CAT?

States must submit regular reports detailing the steps they have taken to comply with the CAT's provisions.

9. How does the CAT address acts of torture by non-state actors?

The CAT primarily addresses acts committed or tolerated by state officials, but it requires states to prevent and punish torture by non-state actors.

10. What is the role of international oversight under the CAT?

The Committee against Torture monitors state compliance, reviews report, investigates allegations, and provides recommendations.

6.9.4 SHORT ANSWER QUESTIONS (SAQs)

1. Define torture according to the Convention.

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) defines torture in **Article 1** as:

"Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

However, the definition excludes pain or suffering arising from lawful sanctions.

Main Elements of the Definition

1. **Intentional Infliction:** Torture involves deliberate acts of causing severe pain or suffering.
2. **Purpose:** Torture is carried out for specific reasons such as extracting information, punishing, intimidating, or discriminating.
3. **Involvement of Public Officials:** Torture is typically carried out by, or with the involvement of, someone in an official capacity, distinguishing it from private acts of violence.
4. **Physical or Mental Pain:** Torture includes both severe physical and mental suffering.

2. What are the main obligations of states parties under the Convention?

The main obligations of states parties under the Convention against Torture (CAT) are:

1. **Prevent Torture:** States must take effective legislative, administrative, and judicial measures to prevent acts of torture within their jurisdiction (Article 2).
2. **Prohibit Torture:** Torture must be criminalized under national law, and no exceptional circumstances (e.g., war or public emergency) can justify its use (Article 4).
3. **Investigate Allegations:** States are required to promptly investigate all allegations of torture and prosecute those responsible (Articles 12 and 13).
4. **Provide Redress to Victims:** States must ensure that victims of torture receive fair and adequate compensation, rehabilitation, and support (Article 14).
5. **Prohibit Refoulement:** States must not extradite or return individuals to countries where they may face torture (Article 3).

6. **Reporting:** States must submit regular reports to the Committee against Torture on the measures they have taken to implement the Convention (Article 19).

6.9.5 TERMINAL AND MODEL QUESTIONS

1. Discuss the impact of the Convention against Torture on international human rights law.

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), adopted in 1984, has had a profound impact on international human rights law, establishing a global legal framework to prevent and punish acts of torture. Its influence extends across various areas of human rights, international law, and state accountability.

1. **Strengthening the Prohibition of Torture:** The CAT solidified the absolute prohibition of torture in international law. Article 2 of the Convention explicitly states that "no exceptional circumstances whatsoever" can justify torture, embedding this principle as a core tenet of human rights law. The Convention emphasizes that torture is a violation of fundamental human dignity, reinforcing the prohibition of torture as *jus cogens* (a peremptory norm of international law).
2. **Obligation to Criminalize Torture:** One of the most significant impacts of CAT is the obligation it places on states to criminalize torture in their domestic legal systems. It requires states to enact laws that explicitly define and punish acts of torture, ensuring perpetrators are held accountable. This has led to the adoption of anti-torture legislation in numerous countries, significantly advancing global legal standards.
3. **Accountability and Prosecution:** The CAT establishes mechanisms for holding individuals accountable for acts of torture, regardless of where the crime was committed. The principle of **universal jurisdiction** allows states to prosecute torturers even if the crime occurred in another country. This has empowered human rights advocates and organizations to seek justice beyond national borders, contributing to the development of the concept of universal human rights enforcement.
4. **Monitoring and Reporting Mechanisms:** The establishment of the **Committee Against Torture** under the Convention has provided an international platform to monitor and assess states' compliance with the Convention's obligations. States are required to submit periodic reports to the Committee, allowing for international scrutiny and pressure on governments to uphold human rights standards. Additionally, the Committee hears complaints from individuals or states, contributing to the development of international jurisprudence on torture.
5. **Impact on International Jurisprudence:** The CAT has influenced rulings in various international human rights bodies, such as the European Court of Human Rights, the Inter-American Court of Human Rights, and the International Criminal Court. These courts often refer to CAT provisions when addressing cases involving torture and inhuman treatment, further embedding its principles in the broader corpus of international law.
6. **Encouraging International Cooperation:** The Convention has fostered greater international cooperation in combating torture, requiring states to assist one another in investigations and prosecutions related to torture. It has also facilitated the exchange of best practices and strategies to improve domestic laws and enforcement mechanisms.
7. **Impact on National and Regional Human Rights Systems:** In addition to its direct influence on national legislation, the Convention has spurred the development of regional

human rights instruments and mechanisms that align with its standards. For example, regional conventions like the **European Convention on Human Rights (ECHR)** and the **American Convention on Human Rights** have adopted similar prohibitions against torture, further expanding the reach of the Convention's principles.

The CAT has significantly shaped international human rights law by establishing torture as a universally condemned crime, mandating legal reforms, and creating a framework for accountability and enforcement. Despite challenges such as inconsistent implementation and political resistance, the Convention remains a cornerstone in the global fight against torture and inhumane treatment, contributing to the advancement of human dignity and the rule of law worldwide.

2. Evaluate the effectiveness of the Committee against Torture in monitoring compliance with the Convention.

The Committee against Torture (CAT) is the body responsible for monitoring the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Convention against Torture). Established under the Convention, the Committee plays a key role in ensuring that state parties adhere to their obligations to prevent torture, investigate instances of torture, and provide remedies for victims.

Effectiveness of the Committee against Torture

1.Periodic Reporting Mechanism

One of the primary tools the CAT uses to monitor compliance is its periodic reporting system. States that have ratified the Convention are required to submit regular reports detailing the steps they have taken to implement the provisions of the treaty. These reports allow the Committee to review and assess the extent to which states are fulfilling their obligations.

Effectiveness: The reporting system provides a regular check on state actions and promotes transparency. However, many states submit late reports, and some reports lack sufficient detail. In such cases, the CAT has limited power to compel compliance.

2.Concluding Observations and Recommendations

After reviewing a state's report, the CAT issues concluding observations, which include commendations for progress made and recommendations for areas where improvements are necessary. These recommendations serve as a roadmap for states to align their practices with the Convention's requirements.

Effectiveness: While the concluding observations provide clear guidance, their effectiveness largely depends on the political will of the state to implement these recommendations. The CAT lacks enforcement mechanisms, and there are no binding consequences for states that ignore the recommendations.

3.Individual Complaints Mechanism

The CAT can receive and investigate individual complaints from individuals who claim to be victims of torture by a state party that has recognized the Committee's competence in this area (under Article 22 of the Convention). This allows for direct engagement with victims and provides a route for individuals to seek justice at the international level.

Effectiveness: The individual complaints mechanism is a crucial tool for addressing specific instances of torture, particularly when domestic legal systems fail. However, not all

states have accepted the Committee's competence to receive such complaints, limiting its reach.

4. Confidential Inquiries

Under Article 20 of the Convention, the CAT has the authority to conduct confidential inquiries when it receives reliable information that torture is being systematically practiced in a state party. This mechanism allows the Committee to take proactive measures in cases of widespread violations.

Effectiveness: Confidential inquiries can be highly effective in exposing systematic torture and pressuring states to change their practices. However, their impact is limited by the willingness of states to cooperate with the inquiry process, and many states may resist such investigations.

5. Follow-Up Procedure

The CAT has established follow-up procedures to monitor whether states are implementing its recommendations. These follow-up procedures allow the Committee to revisit issues raised in previous reviews and encourage continuous progress.

Effectiveness: Follow-up procedures are a positive step toward ensuring accountability, but, like other aspects of the Committee's work, they are hindered by the lack of binding enforcement measures. States that do not engage with the follow-up process face no direct consequences.

Challenges and Limitations

1. **Lack of Enforcement Powers:** One of the key limitations of the CAT is its inability to enforce its recommendations. The Committee can issue observations and urge states to comply, but there are no binding legal mechanisms to ensure states take action.
2. **State Cooperation:** The effectiveness of the CAT is heavily reliant on the cooperation of state parties. Some states fail to submit reports, ignore recommendations, or refuse to allow inquiries, undermining the Committee's ability to monitor compliance.
3. **Limited Resources:** The Committee faces resource constraints, which affect its ability to process reports and complaints efficiently. This can result in delays in addressing issues, diminishing the impact of its monitoring efforts.

The Committee against Torture plays a critical role in promoting compliance with the Convention against Torture and providing avenues for victims to seek justice. While its mechanisms, such as periodic reporting, individual complaints, and confidential inquiries, are effective tools for monitoring compliance, the Committee's impact is limited by its lack of enforcement power, reliance on state cooperation, and resource constraints. To enhance its effectiveness, stronger international support and mechanisms to ensure state compliance with the Committee's recommendations are necessary.

3. Analyze the challenges faced by states in implementing the Convention's provisions.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the Convention against Torture) is a key international treaty aimed at preventing and addressing acts of torture globally. While states that ratify the Convention commit to its provisions, they often face significant challenges in implementing these obligations effectively. These challenges are both legal and practical, arising from domestic systems, political contexts, and resource constraints.

1. Lack of Adequate Domestic Legislation

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One of the primary challenges faced by states is the failure to incorporate the provisions of the Convention into domestic law. Many states have signed and ratified the Convention, but have not fully enacted corresponding national legislation to make its provisions enforceable at the local level.

Challenge: In the absence of clear and enforceable laws, it becomes difficult for national courts and law enforcement agencies to act against perpetrators of torture. Even if torture is criminalized, domestic laws may not provide adequate definitions that align with international standards.

Example: Some countries lack specific laws that define torture or set out penalties for such acts, which allows for impunity or inadequate punishment of offenders.

2. Weak Law Enforcement and Judicial Systems

In some countries, weak law enforcement and judicial systems pose significant barriers to the effective implementation of the Convention. Corruption, inefficiency, and lack of training within the police, judiciary, and other relevant agencies can lead to the failure to prevent, investigate, or prosecute acts of torture.

Challenge: Law enforcement officers may lack the training necessary to recognize and prevent torture or may be complicit in such acts. Similarly, judicial systems in some countries may be too weak or overburdened to handle cases of torture effectively.

Example: In some states, the legal system is plagued by corruption, with law enforcement officers and judges accepting bribes or showing favoritism. This severely undermines efforts to prosecute perpetrators of torture and to provide justice to victims.

3. Political Will and State Complicity

The lack of political will is another major obstacle to implementing the Convention. In some states, torture may be tacitly or even explicitly supported by the government as a means of controlling political opposition, suppressing dissent, or gathering intelligence.

Challenge: Where governments are complicit in torture, there is often no genuine effort to implement the Convention. In such cases, state actors may actively obstruct investigations or shield perpetrators from prosecution, rendering the provisions of the Convention ineffective.

Example: In some authoritarian regimes, torture is used as a tool of political repression. In these cases, the government may not only fail to act against perpetrators but may also attempt to cover up incidents of torture.

4. Cultural and Social Norms

In some societies, torture or inhumane treatment may be deeply ingrained in the culture, whether as a form of punishment, discipline, or interrogation technique. Such norms can pose significant challenges to the implementation of the Convention.

Challenge: Changing deeply held cultural practices and attitudes toward torture requires comprehensive education and reform efforts. Even where laws exist to prohibit torture, enforcement may be weak if the public or authorities view such practices as acceptable or necessary.

Example: In some countries, corporal punishment or harsh interrogation tactics are widely accepted, making it difficult for governments to enforce anti-torture provisions without facing resistance from certain segments of the population.

5. Resource Constraints

Implementing the provisions of the Convention requires significant resources, including funding, infrastructure, and trained personnel. Many states, particularly in the developing world, lack the necessary financial and human resources to carry out the obligations of the Convention effectively.

Challenge: Establishing and maintaining independent oversight mechanisms, training law enforcement personnel, and creating rehabilitation programs for victims of torture are resource-intensive efforts. States with limited budgets may struggle to prioritize these activities over other pressing needs.

Example: Developing countries may lack the financial resources to establish independent human rights commissions or to fund training programs for police officers and judges on anti-torture practices.

6. Security and Counter Terrorism Measures

The global fight against terrorism has led to a significant tension between security measures and human rights obligations. In the context of counterterrorism, some states justify acts of torture or inhumane treatment as necessary to protect national security.

Challenge: Balancing security needs with human rights obligations is a complex issue. Governments often claim that extraordinary measures, including torture, are required to extract information from suspected terrorists or to protect the public. This creates a culture of impunity, where the use of torture is normalized in the name of security.

Example: In the post-9/11 world, some states have used counterterrorism as a justification for waterboarding, indefinite detention, and other forms of torture, in direct violation of the Convention.

7. Non-Refoulement Obligations

Under the Convention, states are prohibited from extraditing or deporting individuals to countries where they are at risk of being tortured. This is known as the principle of non-refoulement. However, states often face challenges in fulfilling this obligation, particularly when dealing with asylum seekers or persons accused of terrorism.

Challenge: States may be under pressure to deport individuals to countries where there is a risk of torture, especially in cases involving national security concerns. Balancing these obligations with political and diplomatic considerations can be difficult for states.

Example: In some cases, states have returned individuals to countries with poor human rights records, arguing that they received assurances from the receiving country that torture would not be used. However, such assurances are not always reliable.

Implementing the Convention against Torture is a complex and challenging task for states. Obstacles such as inadequate domestic legislation, weak law enforcement systems, lack of political will, cultural norms, resource constraints, and security concerns all contribute to the difficulty of fulfilling the Convention's provisions. To overcome these challenges, states need to invest in legal reforms, capacity-building, and education, while ensuring that the fight against torture is prioritized in both domestic and international arenas. Additionally, international cooperation and pressure from bodies like the Committee against Torture (CAT) can help states move toward full compliance with the Convention.

6.10 REFERENCES/ BIBLIOGRAPHY

1. United Nations. (1984). *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Retrieved from UN Treaty Collection.

2. Nowak, M., & McArthur, E. (2008). *The United Nations Convention against Torture: A Commentary*. Oxford University Press.
3. Amnesty International. (2023). *Annual Report on Torture*. Retrieved from Amnesty International.
4. Henckaerts, J. M., & Doswald-Beck, L. (2009). *Customary International Humanitarian Law Volume I: Rules*. Cambridge University Press.
5. Bassiouni, M. C. (2011). *International Criminal Law: International Enforcement*. Transnational Publishers.

6.11 SUGGESTED READINGS

1. Anil Malhotra (2012). *Combating Torture: Indian Law and International Standards*. Eastern Book Company.
2. S. K. Verma (2015). *International Law in India: Development and Prospects*. Satyam Law International.
3. P. Ishwara Bhat (2013). *Fundamental Rights: Cases and Materials*. Eastern Law House.
4. Bassiouni, M. C. (2011). *International Criminal Law: International Enforcement*. Transnational Publishers.
5. Henckaerts, J. M., & Doswald-Beck, L. (2009). *Customary International Humanitarian Law Volume I: Rules*. Cambridge University Press.
6. Sonal K. Mehta & Ved Kumari (2020). *Human Rights and Criminal Justice in India*. Sage Publications.
7. Manfred Nowak (2014). *Human Rights or Global Capitalism: The Limits of Privatization*. University of Pennsylvania Press.

6.11.1 SUGGESTED WEB LINKS

1. <https://treaties.un.org/>
2. <https://www.ohchr.org/>
3. <https://www.amnesty.org/>
4. <https://www.hrw.org/>
5. <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>
6. <https://irct.org/>
7. <https://www.omct.org/>
8. https://www.law.cornell.edu/wex/convention_against_torture

UNIT 7

**CONVENTION ON THE RIGHTS OF PERSONS WITH
DISABILITIES (CRPD)**

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7.1 INTRODUCTION

The **Convention on the Rights of Persons with Disabilities (CRPD)**, adopted by the United Nations in 2006, represents a landmark shift in how disability is understood and addressed on a global scale. Historically, persons with disabilities were often treated as objects of pity or charity, perceived as needing care rather than rights. This outdated perspective perpetuated marginalization, exclusion, and a lack of access to fundamental services. The CRPD is revolutionary because it challenges this view, positioning disability as a matter of human rights rather than solely a medical issue.

7.1.1 HISTORICAL CONTEXT AND SHIFT IN PARADIGM

In the past, most national and international efforts to support persons with disabilities were based on the **medical model of disability**. This model views disability primarily as a defect or illness that needs to be cured or managed through medical intervention. While this approach provided some necessary medical support, it often ignored the broader societal and systemic barriers that contribute to the exclusion of persons with disabilities from full participation in society. The medical model placed the "problem" within the individual, suggesting that their ability to integrate into society depended solely on medical treatment or rehabilitation.

The CRPD introduces the **social model of disability**, which contrasts sharply with the medical approach. The social model asserts that disability is not an inherent problem within the individual but is created by societal attitudes, institutional barriers, and environmental factors. For example, a person who uses a wheelchair is not disabled by their physical condition, but rather by the lack of accessible infrastructure such as ramps or elevators. Thus, the focus shifts from "fixing" the individual to dismantling the barriers that prevent their full participation in society.

This change in perspective reflects a broader evolution in human rights law. The CRPD embodies the human rights model of disability, which not only recognizes persons with disabilities as rights-holders but also asserts that disability is an integral part of human diversity. The Convention builds upon existing international human rights treaties, such as the

Universal Declaration of Human Rights (1948), and reinterprets them considering the unique experiences and challenges faced by persons with disabilities.

7.2 OBJECTIVES

The objectives of this material are multifaceted, aiming to provide a comprehensive understanding of the Convention on the Rights of Persons with Disabilities (CRPD).

1. This unit seeks to ensure that you will be able to **explain the historical evolution of disability rights**, highlighting the shift from the medical model to the social and human rights-based approaches, as introduced by the CRPD.
2. You will be able to **identify and understand the core principles of the CRPD**, such as dignity, autonomy, non-discrimination, and full societal participation for persons with disabilities.
3. This material will equip you to **analyze the impact of the CRPD** on national and international legal frameworks, as well as its role in promoting inclusion and equality for persons with disabilities.
4. You will be able to **recognize the societal, institutional, and environmental barriers** that hinder full participation for persons with disabilities and understand how the CRPD addresses these issues.
5. You will be able to **relate the CRPD to broader international human rights frameworks**, recognizing how its provisions align with other global human rights treaties and conventions.
6. You will be able to **discuss and advocate for the human rights model of disability**, recognizing persons with disabilities as full rights-holders and contributors to human diversity, which is central to the CRPD's vision.

This comprehensive approach ensures you will grasp the CRPD's transformative role in disability rights and its broader implications within the global human rights system.

7.3 CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The CRPD addresses the rights and freedoms of persons with disabilities by framing disability in a broad and comprehensive manner. Each article of the Convention builds on the principle that persons with disabilities are entitled to the same rights as everyone else, while recognizing the need for special measures to ensure equal access.

7.3.1 DEFINITION AND SCOPE

The CRPD adopts a broad and inclusive definition of disability that emphasizes the interaction between a person's impairment and the attitudinal and environmental barriers they face. The focus is not solely on physical impairments but also includes intellectual, sensory,

and psychosocial disabilities. The Convention acknowledges that these barriers may differ across cultures, economies, and communities, and it encourages flexible approaches to addressing them.

- a) **Intersectionality and Disability:** The CRPD acknowledges the complex and compound forms of discrimination faced by individuals with disabilities who belong to other marginalized groups, a concept known as intersectionality. Intersectionality refers to the overlapping and interconnected nature of social categorizations, such as gender, race, ethnicity, sexual orientation, and disability, which create multiple layers of disadvantage. For example, women with disabilities may face both gender-based and disability-based discrimination, limiting their access to education, employment, healthcare, and justice. Similarly, ethnic minorities or LGBTQ+ individuals with disabilities often encounter unique barriers that exacerbate their exclusion and marginalization.

This recognition in the CRPD underscores the need for a more nuanced approach to addressing discrimination. Intersectional discrimination complicates access to rights because the obstacles are not merely additive but interact in ways that deepen social exclusion. The CRPD, therefore, emphasizes the importance of taking into account these overlapping forms of discrimination in policymaking and service delivery to ensure that all individuals with disabilities, particularly those from marginalized groups, are fully included and their rights protected.

- b) **Invisible Disabilities:** Invisible disabilities refer to conditions that are not immediately apparent to others but significantly impact a person's daily life. The Convention on the Rights of Persons with Disabilities (CRPD) emphasizes the need to acknowledge and address these often-overlooked disabilities, which include mental health conditions, learning disabilities, chronic illnesses, and neurological disorders. These disabilities can pose unique challenges because they are frequently unrecognized or misunderstood by legal systems, social structures, and public attitudes. As a result, individuals with invisible disabilities may struggle to access necessary accommodations, such as workplace adjustments or educational support, and face greater barriers to participation in society. Stigma and lack of awareness further complicate their efforts to advocate for their rights, as many may not receive the recognition or validation of their condition. The CRPD calls for a more inclusive approach, urging governments and institutions to ensure that individuals with invisible disabilities are equally supported, protected, and given access to resources and opportunities without discrimination.

7.3.2 PROHIBITION AND MEASURES

The CRPD mandates that State Parties take concrete steps to prevent and eliminate discrimination against persons with disabilities. These measures span from legislative reforms to proactive public policy initiatives aimed at dismantling barriers. Some key areas include:

- a) **Accessible Infrastructure:** Governments are required to ensure public buildings, transport, and information are accessible to persons with disabilities. This involves retrofitting older infrastructure and designing new public spaces with universal design principles in mind.
- b) **Inclusive Education:** Education systems must be inclusive, ensuring that children with disabilities have access to mainstream education, with necessary accommodations made for their learning needs. Special education may still be offered, but inclusion is prioritized as a right.

- c) **Employment:** Employers are required to provide reasonable accommodations and equal opportunities in the workplace. Anti-discrimination laws must explicitly cover disabilities, and there should be provisions for affirmative action if necessary.
- d) **Health and Rehabilitation:** The CRPD mandates access to high-quality health care services, including rehabilitation programs that help persons with disabilities achieve independence and full participation in society.

7.3.2.1 EXAMPLE OF MEASURES

- 1. **Legal reforms** in countries like **Australia** and **Canada** have seen the introduction of comprehensive anti-discrimination laws that explicitly protect the rights of persons with disabilities, including access to public services, housing, and employment.
- 2. **Policy Initiatives:** In **Sweden**, a government initiative ensures all public websites and digital content are fully accessible to persons with disabilities, setting a global standard for digital inclusion.

7.3.3 MONITORING AND REPORTING UNDER THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

The CRPD (Convention on the Rights of Persons with Disabilities) places significant emphasis on the continuous monitoring and reporting of its implementation by State Parties. The goal is to ensure compliance, evaluate progress, and address challenges in promoting the rights of persons with disabilities. The monitoring and reporting mechanisms outlined in the CRPD require comprehensive oversight at both the national and international levels.

7.3.3.1 CORE COMPONENTS OF MONITORING AND REPORTING

a) Submission of Reports to the UN Committee:

- i. State Parties to the CRPD are required to submit regular reports to the *UN Committee on the Rights of Persons with Disabilities*. These reports must detail the measures taken to implement the Convention, the progress achieved, and any difficulties encountered.
- ii. Initial reports are usually due two years after ratification, followed by periodic reports, typically every four years. These submissions allow the Committee to assess compliance and offer recommendations to enhance implementation.

b) National Monitoring Frameworks:

- i. The CRPD encourages State Parties to establish or designate national monitoring frameworks responsible for overseeing the Convention's implementation at the country level. These frameworks should include participation from key stakeholders, particularly persons with disabilities and their representative organizations.
- ii. Involving persons with disabilities ensures that the policies and practices being monitored are reflective of their lived experiences, promoting a more inclusive and effective approach to implementing disability rights.

c) Promoting Transparency and Accountability:

- i. Transparency is a vital principle of the CRPD's monitoring system. To foster accountability, State Parties are required to publicly disseminate the implementation reports. This open approach encourages dialogue with the public, civil society organizations, and disability rights advocates.
- ii. Governments are also urged to engage in continuous dialogue with civil society organizations (CSOs) during the monitoring process. This helps to identify gaps in implementation and ensures that the needs and perspectives of persons with disabilities are considered when revising policies.

7.3.3.2 CIVIL SOCIETY INVOLVEMENT

Civil society organizations (CSOs), particularly non-governmental organizations (NGOs) focused on disability rights, are pivotal in the effective implementation of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Their involvement is crucial for monitoring, reporting, and ensuring that governments uphold their commitments under the convention. CSOs provide an independent lens through which the realities of the lives of persons with disabilities can be assessed, often offering a more nuanced and comprehensive perspective than government reports. Governments are required to submit periodic reports to the CRPD Committee detailing their progress in implementing the convention, but these reports can sometimes overlook significant gaps in policy implementation or fail to represent the actual conditions faced by individuals with disabilities. Here, CSOs step in by conducting research, gathering data, documenting instances of human rights violations, and providing detailed feedback on government policies. Their alternative assessments, often compiled into "shadow reports," give the CRPD Committee a clearer picture of national efforts and shortcomings, helping hold governments accountable.

One of the main contributions of CSOs is in highlighting discrepancies between the official government reports and the experiences of people with disabilities on the ground. This independent monitoring ensures that the reporting process under the CRPD is more balanced and reflects the true state of disability rights within a country. Through their advocacy work, CSOs also raise public awareness about the CRPD and the obligations it imposes on governments, fostering a more informed and active citizenry. This, in turn, supports a culture of accountability where governments are not just pressured from international bodies, but also from within their own societies to uphold the rights of persons with disabilities. Additionally, CSOs serve as a bridge between governments, the CRPD Committee, and the disability community, facilitating dialogue and collaboration. They bring together various stakeholders, fostering a rights-based approach to policy-making that includes the perspectives and needs of persons with disabilities. This collaborative approach is essential for addressing the multi-faceted challenges of implementing the CRPD, as it involves concerted efforts from both state and non-state actors.

However, the work of CSOs is not without challenges. Many CSOs, especially those in developing countries, operate with limited resources, both financially and in terms of human capacity. This resource constraint affects their ability to conduct thorough monitoring, engage in policy advocacy, and produce comprehensive shadow reports. Furthermore, CSOs may face political and legal barriers that restrict their operations. In some countries, governments impose regulations that hinder the free operation of CSOs, limit their access to key policy-making

forums, or create a restrictive environment for human rights monitoring. These obstacles can undermine the ability of CSOs to provide an independent assessment of CRPD implementation. Despite these challenges, CSOs continue to play a vital role in the monitoring process, offering an alternative perspective that is crucial for the CRPD Committee's understanding of how the convention is being implemented globally.

To enhance their effectiveness in monitoring and reporting, CSOs can adopt several best practices. Building partnerships is one such approach, where CSOs collaborate with other civil society groups, national human rights institutions, and international organizations. These partnerships help strengthen their advocacy efforts, pool resources, and amplify their impact, enabling them to address issues in a more comprehensive manner. Additionally, leveraging international human rights mechanisms, such as the Universal Periodic Review (UPR) and engaging with UN Special Rapporteurs, can bring global attention to their findings and exert pressure on governments to fulfill their obligations under the CRPD. Another crucial aspect is capacity development. International donors, governments, and other stakeholders should invest in building the capacity of CSOs, particularly in low-income countries, to enhance their ability to collect data, conduct research, and engage in effective advocacy. This support can include financial assistance, technical support, and training in areas like report writing and policy analysis.

Overall, the involvement of CSOs, particularly NGOs focused on disability rights, is indispensable in the CRPD monitoring process. They not only provide independent assessments that hold governments accountable but also empower persons with disabilities to participate in decision-making processes. By amplifying the voices of persons with disabilities and ensuring that their rights are protected, CSOs contribute to the realization of the CRPD's vision of a world where persons with disabilities enjoy equal rights and opportunities. Strengthening the capacity and involvement of these organizations is essential to advancing disability rights globally. The continued support and engagement of the international community are vital in ensuring that the CRPD remains not just a framework of principles but a living document that drives meaningful change in the lives of persons with disabilities worldwide. By addressing the challenges faced by CSOs and promoting their active participation, we can work towards a future where disability rights are fully recognized, respected, and upheld.

7.3.3.3 MAIN ROLE OF NGOS

1. NGOs often monitor government actions independently and provide feedback on the challenges and gaps in the national implementation of the CRPD. For instance, in countries like India and Brazil, disability rights organizations have been instrumental in scrutinizing government efforts and advocating for improved implementation of the Convention.
2. These organizations engage in public awareness campaigns, publish reports, and actively participate in policy discussions to ensure that disability rights are consistently prioritized.

7.3.3.4 FEEDBACK ON EMERGING CHALLENGES

1. As national governments submit reports to the UN Committee, CSOs provide supplementary "shadow" reports, highlighting issues that may be underrepresented or overlooked by

governments. This parallel reporting system offers a more comprehensive view of a country's adherence to its CRPD commitments.

2. Civil society feedback is also essential in identifying new challenges that arise as the Convention evolves and is implemented over time, enabling a dynamic approach to disability rights protection.

The active participation of civil society strengthens the monitoring process by ensuring transparency, accountability, and inclusivity in achieving the objectives of the CRPD. Through collaboration between state entities and CSOs, the rights of persons with disabilities are better protected and promoted at national and global levels.

7.4 IMPLEMENTATION AND COMPLIANCE

7.4.1 National Legislation

For the CRPD to be effective, its principles must be reflected in domestic law. States are required to enact legislation that incorporates the CRPD's rights and obligations. Main aspects of national implementation include:

- a. **Incorporation of CRPD into National Law:** Many countries, such as the **United Kingdom** and **Germany**, have directly incorporated the CRPD into their national legal frameworks, ensuring that its principles are enforceable in domestic courts.
- b. **Specialized Agencies and Commissions:** Governments establish agencies dedicated to promoting and protecting disability rights, such as **Australia's Disability Discrimination Commissioner** or **India's National Commission for Persons with Disabilities**.

7.4.2 INTERNATIONAL OVERSIGHT

At the international level, compliance with the CRPD is overseen by the **Committee on the Rights of Persons with Disabilities**, which is tasked with reviewing periodic reports from State Parties. This oversight is further enhanced through:

- 1) **General Comments:** The Committee issues authoritative interpretations on how specific articles of the Convention should be applied, guiding national implementation.
- 2) **Individual Complaints Mechanism:** The Optional Protocol to the CRPD allows individuals to bring complaints to the Committee if their rights have been violated. This mechanism is crucial for holding states accountable for non-compliance.

7.4.2.1 EXAMPLE OF INTERNATIONAL OVERSIGHT

In 2018, the **Committee on the Rights of Persons with Disabilities** reviewed the compliance of **Kenya** with the CRPD and provided detailed recommendations on improving access to healthcare and education for persons with disabilities.

7.5 CHALLENGES AND CRITICISM

Despite its comprehensive framework, the Convention on the Rights of Persons with Disabilities (CRPD) faces several challenges and criticisms related to its enforcement and implementation. These obstacles limit its effectiveness in safeguarding the rights of persons with disabilities and call for deeper scrutiny of both domestic and international efforts in upholding the convention's principles.

7.5.1 ENFORCEMENT ISSUES

The CRPD's implementation often encounters significant barriers, stemming from inadequate enforcement mechanisms, resource constraints, and cultural attitudes toward disability. These challenges undermine the convention's aim to establish a world that is equitable for persons with disabilities.

7.5.1.1 WEAK ENFORCEMENT MECHANISMS

In many countries, especially those with underdeveloped legal systems, the enforcement of CRPD standards is fraught with difficulties. A critical issue is the lack of robust legal mechanisms to ensure compliance with the convention. Even when countries have ratified the CRPD, domestic law may not provide clear avenues for enforcement, resulting in a situation where violations of disability rights go unaddressed.

For example, in the case of *O.S. v. Australia* (CRPD/C/18/D/24/2014), the CRPD Committee found that Australia's immigration laws failed to accommodate the complainant's disability needs adequately. Although Australia had ratified the CRPD, the enforcement of the committee's recommendations was weak, highlighting the gap between international obligations and domestic law enforcement. This illustrates how countries, despite their commitment to the CRPD, may fall short in implementing specific provisions due to inadequate enforcement frameworks.

7.5.1.2 RESOURCE CONSTRAINTS

Many developing countries struggle with the financial and institutional capacity necessary to implement the comprehensive reforms required by the CRPD. Ensuring accessible infrastructure, education, healthcare, and employment opportunities for persons with disabilities requires significant resources. For instance, modifying public buildings, transportation systems, and information technology to make them accessible entails substantial investments. Additionally, there is a need for trained personnel, legal professionals, and advocates who understand and can promote the rights enshrined in the CRPD.

A case illustrating these constraints is seen in various African nations where, despite the ratification of the CRPD, many are unable to enforce disability rights fully due to economic limitations. In regions where basic healthcare and education infrastructure are already strained, allocating resources to disability-inclusive reforms often becomes a lower priority, further exacerbating inequality.

7.5.1.3 LACK OF AWARENESS

Public awareness of disability rights is another significant challenge to the enforcement of the CRPD. In many parts of the world, societal attitudes towards disability are still

influenced by stigma and misconceptions, which limits the effectiveness of legal reforms. The CRPD emphasizes the importance of awareness-raising in Article 8, yet progress remains slow in changing deep-seated cultural biases.

For example, in certain traditional societies, disabilities may be perceived as a source of shame or viewed through a purely medical lens, rather than as a matter of human rights. This cultural context can lead to resistance against implementing CRPD-aligned reforms, such as inclusive education systems or equal employment opportunities. Without widespread public support and understanding, legal measures alone cannot achieve the transformative change the CRPD envisions.

7.5.2 EMERGING CONCERNS

As the global landscape evolves, new challenges are emerging that threaten to widen the inequality gap for persons with disabilities. Addressing these concerns is essential to ensure that the CRPD remains relevant and effective.

7.5.2.1 TECHNOLOGICAL INEQUALITY

The digital age has brought about new forms of inequality, particularly for persons with disabilities. While technology has the potential to enhance accessibility and inclusion, it often creates barriers when digital platforms are not designed with accessibility in mind. The *Ten Berge v. The Netherlands* (CRPD/C/22/D/38/2016) case, for instance, underscored the necessity for digital services, such as websites and online applications, to be accessible to persons with disabilities. The lack of accessible digital infrastructure prevents equal participation in critical aspects of modern life, including education, employment, and healthcare.

Countries must ensure that digital services comply with accessibility standards such as the Web Content Accessibility Guidelines (WCAG) to uphold the rights enshrined in the CRPD. Without proactive measures, the growing digital divide will further marginalize persons with disabilities, contrary to the CRPD's mandate.

7.5.2.2 CLIMATE CHANGE AND DISABILITY

The impact of climate change disproportionately affects persons with disabilities, particularly in terms of access to emergency services and evacuation options. During natural disasters, persons with disabilities may face heightened risks due to physical, informational, or logistical barriers. For example, during hurricanes or floods, individuals with mobility impairments may be unable to evacuate quickly, and emergency information may not be provided in accessible formats such as sign language or Braille.

Despite the CRPD's emphasis on risk reduction and emergency preparedness in Article 11, many countries lack inclusive disaster management strategies. The absence of disability-inclusive climate policies exacerbates the vulnerability of persons with disabilities to the consequences of climate change, highlighting the need for integrated and inclusive approaches in climate action.

7.5.2.3 PANDEMIC RESPONSE

The COVID-19 pandemic exposed significant gaps in healthcare access for persons with disabilities, illustrating how public health crises can undermine the rights protected by the CRPD. Many individuals with disabilities faced challenges in accessing essential services, including difficulties in obtaining pandemic-related information in accessible formats. Additionally, disruptions to rehabilitation services and support networks further marginalized persons with disabilities during the pandemic.

An example of this was the lack of sign language interpretation and alternative formats for public health announcements, which left many in the deaf community without vital information. The pandemic highlighted the necessity for inclusive healthcare policies that consider the diverse needs of persons with disabilities, as outlined in Article 25 of the CRPD. Moving forward, countries must incorporate disability-inclusive practices in their public health responses to future pandemics or health emergencies.

In conclusion, while the CRPD provides a comprehensive framework for protecting the rights of persons with disabilities, its enforcement and implementation face several challenges. Addressing weak enforcement mechanisms, resource constraints, cultural attitudes, and emerging concerns such as technological inequality, climate change, and pandemic response are vital. Governments, civil society, and international organizations must work collaboratively to overcome these obstacles and realize the CRPD's vision of a world where persons with disabilities enjoy full and equal rights.

7.6 CASE LAWS AND ILLUSTRATIONS

7.6.1 Landmark Cases

1. **European Court of Human Rights: Glor v. Switzerland (2009):** This case involved a Swiss man who was deemed unfit for military service due to diabetes and was required to pay a military tax. He claimed that this was discriminatory. The European Court of Human Rights ruled that Switzerland had violated the European Convention on Human Rights. This case is often cited in discussions on equal treatment of persons with disabilities.
2. **Australia: Lane v. Morrison (2009):** A key case where the High Court of Australia ruled that the Australian Defence Force's policy of discharging personnel for disabilities (in this case, post-traumatic stress disorder) violated the Disability Discrimination Act 1992.

7.6.2 ILLUSTRATIONS OF CRPD IMPACT

1. **Inclusive Education: Norway** serves as a model for inclusive education, where schools are required to adapt to the needs of students with disabilities by law, ensuring their right to mainstream education.
2. **Accessibility in Public Spaces: In Singapore**, recent reforms have focused on making public transportation and buildings accessible to persons with disabilities, ensuring that infrastructure development aligns with the CRPD.

7.7 SUMMARY

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The CRPD has established a comprehensive international framework for the protection and promotion of the rights of persons with disabilities. Its implementation requires active involvement from both state and non-state actors, with a focus on creating inclusive legal systems, societies, and environments. Despite progress, challenges remain, particularly in enforcement, technological inclusion, and intersectional discrimination. Going forward, the CRPD must adapt to emerging global issues, ensuring that persons with disabilities are fully protected and included.

7.8 GLOSSARY

1. **Accessibility:** The degree to which an environment, service, or product is designed to accommodate people of all abilities.
2. **Committee on the Rights of Persons with Disabilities:** A body of independent experts that monitors the implementation of the CRPD.
3. **Optional Protocol:** A supplementary agreement to the CRPD that allows for individual complaints to be brought before the Committee.

7.9 WORKSHEET BASED ON THE SLM

7.9.1 True/False

1. The CRPD focuses solely on providing medical care to persons with disabilities. **(False)**
2. The CRPD emphasizes disability as a matter of human rights, not just a medical issue. **(True)**
3. According to the CRPD, disability is an inherent problem within the individual. **(False)**
4. The CRPD aims to provide equal rights and opportunities to persons with disabilities. **(True)**
5. The medical model of disability places the "problem" within the individual, while the social model places it on societal barriers. **(True)**

7.9.2 Fill in the Blanks

1. The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations in the year _____. **(2006)**
2. The CRPD challenges the outdated view that persons with disabilities are objects of _____ or charity. **(Pity)**
3. The _____ model of disability focuses on dismantling societal barriers rather than "fixing" the individual. **(Social)**
4. The CRPD recognizes persons with disabilities as full _____ -holders. **(Rights)**

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

5. The CRPD builds upon existing international human rights treaties such as the _____ Declaration of Human Rights (1948). **(Universal)**

7.9.3 One-Line Answer Questions

1. **What does the CRPD emphasize about persons with disabilities?**

It emphasizes that persons with disabilities are rights-holders and deserve equal rights and opportunities.

2. **Which model of disability does the CRPD promote?**

The CRPD promotes the social model of disability.

3. **What is the primary focus of the social model of disability?**

The focus is on societal and environmental barriers that prevent full participation by persons with disabilities.

4. **What is intersectionality in the context of the CRPD?**

Intersectionality refers to the overlapping forms of discrimination faced by individuals with disabilities who belong to other marginalized groups.

7.9.4 Very Short Answer Questions

1. **What is the significance of the CRPD in global disability rights?**

The CRPD represents a paradigm shift by treating disability as a human rights issue and not just a medical concern.

2. **How does the CRPD differ from the medical model of disability?**

The CRPD rejects the medical model, which views disability as a defect, and adopts the social model, which focuses on societal barriers.

3. **What does the CRPD emphasize about the rights of persons with invisible disabilities?**

The CRPD stresses the need for equal support and recognition for individuals with invisible disabilities, such as mental health conditions.

4. **How does the CRPD address societal barriers?**

The CRPD advocates for dismantling institutional, attitudinal, and environmental barriers that prevent persons with disabilities from full participation in society.

7.10 SHORT ANSWER QUESTIONS (SAQS)

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

1. What is the main objective of the CRPD?
2. Explain the concept of “reasonable accommodation.”
3. What role does the Committee on the Rights of Persons with Disabilities play?
4. Describe the significance of *Olmstead v. L.C.* in advancing disability rights.
5. Discuss one challenge in enforcing the CRPD.

7.11 TERMINAL AND MODEL QUESTIONS

1. Discuss the role of national legislation in implementing the CRPD.
2. Analyze the challenges of enforcing the CRPD in developing countries.
3. Evaluate the impact of *Glor v. Switzerland* on the development of disability law in Europe.

7.12 REFERENCES/BIBLIOGRAPHY

1. United Nations, Convention on the Rights of Persons with Disabilities (CRPD), 2006.
2. *Olmstead v. L.C.*, 527 U.S. 581 (1999).
3. Degener, T. “Disability in a Human Rights Context.” *Laws*, 5(3), 35, 2016.
4. Quinn, G., & Degener, T., *Human Rights and Disability: The Current Use and Future Potential of United Nations Human Rights Instruments*, 2002.

7.13 SUGGESTED READINGS

1. Bassor, L. A., & Jones, M., *Disability, Divers-Ability, and Legal Change*, 2011.
2. Lord, J. E., & Stein, M. A., *The Role of International Law in Advancing the Rights of Persons with Disabilities*, *Harvard Law Review*, 2008.

UNIT 8

EUROPEAN REGIONAL HUMAN RIGHTS MECHANISMS

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8.1 INTRODUCTION

The European regional human rights system is widely regarded as one of the most advanced and effective frameworks for the promotion and protection of human rights. This system operates under the leadership of three major institutions: the **Council of Europe**, the **European Union (EU)**, and the **Organization for Security and Co-operation in Europe (OSCE)**. These institutions work collectively to uphold the fundamental values of democracy, human rights, and the rule of law across Europe.

At the core of this regional system is the **European Convention on Human Rights (ECHR)**, an international treaty that safeguards the civil and political rights of individuals within the member states of the Council of Europe. The Convention is enforced by the **European Court of Human Rights (ECHR)**, a judicial body that ensures compliance with the rights and freedoms guaranteed by the ECHR. The **ECHR** allows individuals to file complaints against states for human rights violations, thus offering a unique and powerful tool for the protection of individual rights.

In addition to the **ECHR**, the European Union has its own human rights framework, solidified by the **Charter of Fundamental Rights of the European Union**. Meanwhile, the OSCE, with its emphasis on human security, contributes significantly to the regional human rights agenda through its various mechanisms and institutions.

This unit will explore these systems, their historical foundations, legal frameworks, and mechanisms for monitoring and enforcement. Furthermore, it will address the challenges that these systems face in adapting to emerging issues such as migration, digital rights, and compliance in an era of rising nationalism and populism across the continent.

8.2 OBJECTIVES

By the end of this unit, you will be able to:

1. Understand the structure and functioning of the European human rights system.

2. Identify the key institutions, including the European Court of Human Rights and the Council of Europe.
3. Analyze the role of the European Convention on Human Rights (ECHR) in promoting and protecting human rights.
4. Explore landmark cases that have shaped the European human rights landscape.
5. Understand the procedure for bringing a case to the European Court of Human Rights.
6. Recognize the challenges and criticisms of the European human rights system.

8.3 THE COUNCIL OF EUROPE AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

8.3.1 The Council of Europe

The **Council of Europe** was founded in 1949 as a response to the horrors of World War II, with the goal of fostering unity and cooperation among European nations based on the principles of democracy, human rights, and the rule of law. Its creation was driven by a need to prevent a recurrence of the atrocities of the war and to create a more stable and peaceful Europe. The **Treaty of London**, signed by 10 European states, established the Council, which today consists of **47 member states**, including nearly all European nations, encompassing over 820 million citizens.

The Council's work revolves around the promotion of legal standards, human rights protections, and democratic governance. It operates through various conventions, treaties, and institutions, with the European Convention on Human Rights (ECHR) being its most significant and widely recognized achievement. The Council of Europe has developed a wide array of legal instruments that address issues such as social rights, economic rights, the environment, cultural heritage, and minority rights.

In addition to the ECHR, other prominent treaties include the European Social Charter (promoting economic and social rights), the European Charter for Regional or Minority Languages (aiming to protect and promote linguistic diversity), and the Convention on Action against Trafficking in Human Beings. The Istanbul Convention, another milestone, focuses on preventing and combating violence against women and domestic violence.

Moreover, the Council of Europe is distinct from the European Union, although both organisations often collaborate. Unlike the EU, the Council focuses more on legal, human rights, and cultural cooperation rather than economic or political integration.

8.3.2 The European Convention on Human Rights (ECHR)

The **European Convention on Human Rights (ECHR)**, adopted in **1950** and entering into force in **1953**, was the first binding international treaty dedicated solely to protecting

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human rights and freedoms in Europe. Drafted in the aftermath of World War II, the Convention was designed to protect individual rights from state violations, ensuring that no government could arbitrarily abuse its citizens' fundamental freedoms.

The **ECHR** is a comprehensive document that enshrines civil and political rights, including but not limited to:

1. Right to life (Article 2)
2. Prohibition of torture (Article 3)
3. Right to liberty and security (Article 5)
4. Right to a fair trial (Article 6)
5. Freedom of expression (Article 10)
6. Right to respect for private and family life (Article 8)
7. Freedom of thought, conscience, and religion (Article 9)
8. Prohibition of discrimination (Article 14)

The **ECHR** distinguishes itself from other international human rights treaties through its enforceability. What sets the ECHR apart is that it provides individuals, non-governmental organisations, and groups of individuals the ability to file applications directly with the European Court of Human Rights (ECHR) if they believe that their rights under the Convention have been violated. Before filing a case with the ECHR, however, applicants must exhaust all domestic remedies, ensuring that the national judicial system has the first opportunity to address the violation.

The Court has broad jurisdiction, and once it determines that a state has violated the Convention, its judgments are binding. The binding nature of the ECHR's rulings ensures that states must follow through on the Court's orders, typically involving compensation to the victims, legal reforms, or other measures. This mechanism makes the ECHR one of the most powerful human rights treaties globally. Since its adoption, the ECHR has heard thousands of cases and has had a profound impact on the protection of human rights in Europe.

Several additional protocols to the ECHR have expanded the scope of rights guaranteed by the Convention. For example, Protocol No. 1 ensures the right to education and the protection of property, while Protocol No. 6 and Protocol No. 13 address the abolition of the death penalty.

8.3.2.1 The Committee of Ministers and Parliamentary Assembly

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The Committee of Ministers and the Parliamentary Assembly are the two main bodies of the Council of Europe responsible for overseeing the implementation of the ECHR and the broader human rights agenda of the Council.

1) The Committee of Ministers

The Committee of Ministers is the principal decision-making body of the Council of Europe. Composed of the foreign ministers (or their representatives) from all 47 member states, the Committee plays a crucial role in the governance of the Council. It supervises the execution of judgments from the **European Court of Human Rights** and ensures that member states comply with their obligations under the ECHR.

Once the **ECHR** issues a ruling, the Committee of Ministers is tasked with monitoring the enforcement of that decision by the relevant state. The state must implement necessary measures, which may include compensating victims, changing laws, or revising practices to prevent future violations. The Committee works with the offending state to ensure compliance, and in extreme cases, non-compliance could result in political pressure, sanctions, or, in very rare cases, suspension from the Council of Europe.

The Committee of Ministers also adopts recommendations, resolutions, and declarations to address broader human rights issues across Europe and works to promote human rights through various programs and cooperative initiatives with member states.

2) The Parliamentary Assembly

The **Parliamentary Assembly of the Council of Europe (PACE)** consists of members of parliament from each member state. Each country sends a delegation proportional to its population, and representatives are selected from national parliaments. PACE plays a pivotal role in shaping the Council's human rights agenda, initiating debates, and monitoring the human rights situation in member states.

While PACE does not have legislative powers, it exerts influence through advisory opinions and recommendations. PACE members also elect the Secretary General of the Council of Europe, judges of the European Court of Human Rights, and the Council of Europe's Commissioner for Human Rights, further embedding human rights oversight into the Council's operations.

Additionally, PACE monitors elections, fosters dialogue, and advocates for the rights of minorities, refugees, and displaced persons across the continent. PACE's human rights report often highlights pressing issues such as migration, freedom of expression, and judicial independence, and its resolutions can drive reforms in member states.

Through these bodies, the **Council of Europe** has created an institutional framework that not only promotes human rights but actively enforces compliance through international legal obligations and political mechanisms.

These institutions work collectively to uphold the ECHR's standards and ensure that states remain accountable for any violations. They provide a forum for dialogue, cooperation, and enforcement, ensuring that Europe remains a leader in the global human rights movement.

8.3.3 The European Court Of Human Rights (ECHR)

8.3.3.1 Structure and Function

The **European Court of Human Rights (ECHR)**, headquartered in Strasbourg, France, is the judicial body responsible for enforcing the European Convention on Human Rights (ECHR). The Court operates as a supranational institution, meaning it can make rulings on human rights violations that override national decisions if a violation of the Convention is found. Each of the 47 member states of the **Council of Europe** appoints a judge to the Court. However, these judges do not represent their respective countries and are required to act independently, ensuring their decisions reflect the values of the ECHR rather than national interests.

The ECHR's primary function is to interpret and apply the provisions of the ECHR through its rulings. It hears complaints from individuals, groups, and states who allege that one or more rights guaranteed under the Convention have been violated. Its judgments are binding on the states concerned, and the Committee of Ministers of the Council of Europe supervises the execution of those judgments. While the Court does not have enforcement power in the traditional sense, non-compliance with its rulings can lead to political pressure, sanctions, and reputational damage for member states. In some cases, states that continually disregard ECHR rulings may face suspension from the Council of Europe.

In addition to its role as a judicial body, the Court also influences national laws and practices. Many member states have reformed their legal systems in response to ECHR rulings, and the Court's case law is often referenced in national courts as persuasive authority on human rights issues.

8.3.3.2 Admissibility and Application Process

You may wonder how an individual can bring their case before the European Court of Human Rights (ECHR). This process is complex but crucial in ensuring that the Court only handles cases that meet specific, rigorous criteria. Understanding the admissibility process helps clarify how the ECHR operates within its principle of subsidiarity—the idea that national courts should be the first to address human rights violations, and the ECHR only intervenes when domestic systems fail to provide an adequate remedy. Let's explore this process step by step, using practical examples and illustrations to make it clearer.

8.3.3.3 The Principle of Subsidiarity: Why Domestic Courts Come First

Before diving into the technical aspects of the application process, it's important to grasp the idea of subsidiarity. Subsidiarity means that national courts have the primary responsibility to address human rights issues within their own legal frameworks. The ECHR

doesn't replace national courts; instead, it steps in only when domestic legal remedies have been exhausted and proven inadequate.

Imagine that you are a journalist in France who believes your right to freedom of expression has been violated because the government censored your articles. Your first step would be to take your case through France's legal system, appealing all the way to the country's highest court if necessary. Only if the national courts fail to deliver justice can you consider bringing your case to the ECHR.

8.3.3.4 Exhausting Domestic Remedies: What Does It Mean?

In most legal systems, you must first try to resolve your complaint within the country's own courts before you can approach an international body like the ECHR. This is known as exhausting domestic remedies. In practice, this means that you have to go through all available legal channels, including appeals, before you can take your case to the ECHR.

For example, if you believe your right to a fair trial has been violated in Germany, you must first present your case in German courts. If the highest court in Germany fails to resolve the violation satisfactorily, you can then bring your case to the ECHR.

In *Kudla v. Poland (2000)*, the applicant exhausted all domestic remedies in Poland concerning the excessive length of proceedings in his criminal case before turning to the ECHR. The Court ruled that Poland had violated the applicant's right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR).

8.3.3.5 The Six-Month Rule: Timing Is Critical

Once you've exhausted all domestic remedies, you must file your application with the ECHR within six months of the final decision by your country's highest court. The six-month time limit is crucial and strictly enforced by the ECHR.

Let us imagine that you live in Italy, and the Italian Supreme Court has ruled against your claim of unlawful detention. From the day that final judgment is issued, you have six months to submit your application to the ECHR. If you miss this deadline, the Court will reject your case outright, no matter how strong your claim is.

8.3.3.6 Admissibility Criteria: What the Court Looks For?

Even if you meet the six-month deadline, not every case is accepted by the ECHR. The Court receives tens of thousands of applications each year but only a small fraction are found admissible. To determine whether your case is worth hearing, the Court applies several admissibility criteria. Here's what you need to keep in mind:

1. **Violation of a Right Protected by the ECHR:** Your case must involve a violation of a right explicitly guaranteed by the European Convention on Human Rights (ECHR). For example, the right to life, freedom from torture, or freedom of speech.

Illustration: If a citizen of Norway claims that their right to privacy (Article 8) was violated by government surveillance, they could bring their case to the ECHR, provided the case meets other criteria.

2. **Directly Affected Applicant:** You, the applicant, must be directly affected by the alleged violation. This means you can't file an application on behalf of someone else unless you have a legal relationship with that person, such as being their guardian.

3. **Exhaustion of Domestic Remedies:** As discussed earlier, you must have tried all possible legal options in your home country before turning to the ECHR.

4. **Filing within Six Months:** The application must be filed within the six-month limit following the final domestic decision. This ensures that cases are brought in a timely manner.

5. **Complaint Must Not Be Anonymous or Manifestly Ill-Founded:** Your application can't be anonymous, and it must present a plausible case. If your claim is clearly without merit or based on misunderstandings of the law, the Court will dismiss it.

8.3.3.7 Case Inadmissibility: When the Court Says No

What happens if your case doesn't meet these criteria? The ECHR will declare it inadmissible, and unfortunately, this decision is final—there is no appeal process. If the Court finds that your case is inadmissible, you will not have another opportunity to present it.

8.3.3.8 Moving Forward: What Happens Once Your Case Is Admissible?

If your case meets the admissibility criteria, the next step is for the ECHR to hold a hearing. The Court will review the facts of your case, consider the legal arguments, and then issue a judgment. In some situations, the Court can issue interim measures in urgent cases. This happens when immediate action is needed to prevent further harm to the applicant.

Example of Interim Measures: If someone in Russia is about to be deported to a country where they risk being tortured; the ECHR can intervene with interim measures to stop the deportation while the case is under review.

8.3.3.9 The Judgment: What the Court Decides

After the hearing, the ECHR will issue a judgment. If the Court finds that your rights have been violated, it can order compensation or other remedies, and the state involved is legally bound to comply. These judgments often lead to significant changes in national laws and practices.

In the landmark case of *Dudgeon V. United Kingdom (1981)*, the ECHR ruled that the criminalization of homosexual acts in Northern Ireland violated the applicant's right to respect for private life under Article 8 of the ECHR. As a result of this judgment, the UK government was forced to change its laws, decriminalizing homosexual conduct.

The admissibility and application process at the ECHR is designed to ensure that only serious, well-founded cases make it to the Court. Understanding the criteria for admissibility—such as exhausting domestic remedies, meeting the six-month deadline, and presenting a direct violation of a right under the ECHR—are key to navigating the system. Through landmark cases and timely interventions, the ECHR continues to play a critical role in shaping the landscape of human rights in Europe.

8.3.3.10 Major Cases and Precedents

The ECHR has delivered numerous landmark judgments that have profoundly shaped human rights law across Europe. These rulings not only influence the domestic laws of the Council of Europe's member states but also set important precedents in international human rights law.

Soering v. the United Kingdom (1989)

In this case, the Court ruled that the UK could not extradite **Jens Soering** to the United States, where he faced the death penalty, because the conditions on death row would constitute inhumane and degrading treatment under **Article 3** of the ECHR. This case set a significant precedent regarding the treatment of individuals facing extradition to countries where they could be subjected to torture or ill-treatment, influencing the extradition policies of many European states.

Lautsi v. Italy (2011)

This case involved a challenge to the display of crucifixes in Italian public-school classrooms. The applicant, an atheist mother, argued that the presence of religious symbols in state schools violated her children's right to freedom of thought, conscience, and religion under **Article 9** of the ECHR. Initially, the Court found in favor of the applicant, but after an appeal to the Grand Chamber, the ruling was overturned, allowing the display of crucifixes in schools. The case raised critical questions about the role of religious symbols in public spaces and the balance between freedom of religion and the secular nature of public education.

Oliari and Others v. Italy (2015)

This case addressed the rights of same-sex couples in Italy, who were unable to access any form of legal recognition for their relationships. The Court found that Italy had violated **Article 8** (right to respect for private and family life) by failing to provide legal recognition to same-sex unions. The ruling compelled Italy to introduce civil unions for same-sex couples and has been influential in advancing LGBTQ+ rights across Europe.

8.3.3.11 Recent Cases and Developments

1. Ukraine v. Russia (re Crimea and Eastern Ukraine) (2021)

In recent years, the ECtHR has played an important role in addressing human rights violations related to the conflict in Eastern Ukraine and the annexation of Crimea by Russia. In *Ukraine v. Russia*, the Court dealt with allegations of systematic human rights violations by Russian authorities in Crimea, including the suppression of dissent, unlawful detention, and mistreatment of Crimean Tatars. The case is ongoing, but it highlights the ECtHR's role in addressing human rights issues in complex geopolitical contexts.

2. Selahattin Demirtas v. Turkey (2020)

This case involved **Selahattin Demirtas**, a Kurdish politician and co-leader of the People's Democratic Party (HDP) in Turkey, who was arrested and detained on terrorism-related charges in 2016. The ECtHR ruled that Turkey had violated Demirtas' rights under **Article 5** (right to liberty and security) and **Article 10** (freedom of expression) and called for his immediate release. Turkey's refusal to comply with the ruling has drawn widespread criticism and raised concerns about the enforcement of ECtHR judgments in politically sensitive cases.

3. Duarte Agostinho and Others v. Portugal and 32 Other States (2020)

In 2020, six Portuguese children and young adults filed a complaint against 33 countries, arguing that their failure to take sufficient action on climate change violated their rights under the ECHR, particularly their right to life and private and family life under **Articles 2 and 8**. This case is notable because it represents the growing recognition of climate change as a human rights issue and the potential role of the ECtHR in holding states accountable for their environmental policies. The case is ongoing and could set a precedent for future climate-related human rights cases.

These cases demonstrate the ECtHR's critical role in protecting human rights across Europe, addressing issues ranging from the death penalty and religious freedom to LGBTQ+ rights and environmental justice. The Court's judgments have had a profound impact on national laws and policies, and its evolving jurisprudence continues to shape the protection of human rights in Europe and beyond.

8.3.4 The European Union (EU) and Human Rights

8.3.4.1 Human Rights within the European Union

Human rights protection has always been a core element of the European Union's mission. Although the EU initially focused on economic cooperation, human rights considerations have progressively become integral to its legal and political frameworks.

The **Charter of Fundamental Rights of the European Union**, which became legally binding with the Treaty of Lisbon in 2009, codifies a wide array of civil, political, economic, and social rights for EU citizens. These rights are in line with those guaranteed by the ECHR, and the two systems are complementary.

8.3.4.2 The Court of Justice of the European Union (CJEU)

The **Court of Justice of the European Union (CJEU)**, based in Luxembourg, is responsible for interpreting EU law, including the Charter of Fundamental Rights. It ensures that EU member states and institutions comply with the fundamental rights set out in the Charter.

The CJEU has delivered key judgments that reinforce the EU's commitment to human rights. For example, in **Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos (2014)**, the Court upheld the right to privacy in the context of data protection, often referred to as the "right to be forgotten."

8.3.4.3 EU Accession to the ECHR

One of the most significant developments in the European human rights system is the EU's ongoing effort to accede to the ECHR. Although the EU itself is not yet a signatory to the Convention, its legal system is already heavily influenced by ECHR jurisprudence. Accession would formalise this relationship and ensure even greater coherence between the EU's and the Council of Europe's human rights systems.

8.3.5 The Organisation for Security and Cooperation in Europe (OSCE)

8.3.5.1 The OSCE's Role in Human Rights

The **Organization for Security and Co-operation in Europe (OSCE)**, established during the Cold War, is the largest regional security organisation in the world, with 57 participating states. Although primarily focused on politico-military and economic/environmental security, the OSCE also has a strong commitment to the protection and promotion of human rights.

The OSCE's approach to security is comprehensive, emphasizing the importance of the "human dimension," which includes respect for human rights as a cornerstone of long-term peace and stability.

8.3.5.2 The Office for Democratic Institutions and Human Rights (ODIHR)

The **ODIHR** is the main OSCE institution responsible for monitoring human rights, democracy, and the rule of law in member states. ODIHR conducts election observation missions, provides assistance in strengthening democratic institutions, and monitors compliance with OSCE human rights commitments.

The OSCE's work in human rights is particularly relevant in post-conflict situations, where it helps to rebuild legal and political systems while ensuring that human rights norms are respected.

8.3.6 Mechanisms for Monitoring and Enforcement

8.3.6.1 The European Commissioner for Human Rights

The **European Commissioner for Human Rights** is an independent, non-judicial institution under the Council of Europe. The Commissioner is tasked with promoting human rights and identifying shortcomings in national laws and practices. While the Commissioner does not have enforcement powers, their recommendations carry significant weight and often lead to reforms at the national level.

8.3.6.2 The European Committee for the Prevention of Torture (CPT)

The **European Committee for the Prevention of Torture (CPT)** plays a unique role in monitoring the treatment of individuals deprived of their liberty. The CPT conducts visits to prisons, police stations, and other places of detention to assess the conditions and make recommendations to prevent ill-treatment and torture.

8.3.6.3 The Venice Commission

The **Venice Commission**, or the **European Commission for Democracy through Law**, is an advisory body of the Council of Europe that provides legal expertise on constitutional and human rights matters. It helps states implement reforms that strengthen democratic institutions and ensure compliance with human rights standards.

8.3.7 Challenges facing the European Human Rights System

8.3.7.1 Rising Populism and Nationalism

The rise of populist and nationalist movements in Europe poses a significant challenge to the regional human rights system. These movements often reject the authority of international bodies like the ECHR, framing human rights norms as incompatible with national sovereignty. The backlash against international human rights institutions has led some states to question their obligations under the ECHR, weakening the system's overall effectiveness.

8.3.7.2 Compliance and Enforcement

While the ECHR's judgments are binding, compliance is not always guaranteed. Some states have delayed or outright refused to implement certain rulings due to domestic political considerations. For example, **Russia's non-compliance with** several ECHR judgments has raised questions about the enforcement mechanisms available to the Council of Europe.

8.3.7.3 Overburdening of the ECHR

The ECHR faces a growing backlog of cases, with thousands of applications pending at any given time. This has led to significant delays, sometimes taking years before a case is heard. Reforms, such as the introduction of the **Protocol No. 14**, have sought to streamline procedures, but the Court remains overwhelmed by its caseload.

8.3.8 The Future of the European Human Rights System

8.3.8.1 Strengthening National Human Rights Institutions (NHRIs)

To alleviate pressure on the ECHR, national human rights institutions play a crucial role in the first line of defense for human rights. Strengthening these institutions can help address human rights violations at the domestic level, reducing the number of cases that need to go to the ECHR.

8.3.8.2 Expanding Human Rights Protections

As new challenges such as digital rights, environmental degradation, and migration emerge, the European human rights system must adapt. The ECHR and the EU will likely need to expand their scope of rights protection to address these evolving issues.

8.3.8.3 Enhancing Regional Cooperation

For the European human rights system to remain effective, closer cooperation between the Council of Europe, EU, and OSCE will be essential. Coordinating their efforts to monitor and enforce human rights standards can help address challenges more comprehensively.

8.4 SUMMARY

The European human rights system has been a beacon of progress and innovation in the field of international human rights law. With institutions like the Council of Europe, ECHR, and CJEU, Europe has built one of the most robust regional human rights frameworks in the world. However, challenges such as populism, nationalism, and compliance issues continue to threaten the system's effectiveness. To safeguard its future, Europe must adapt its human rights mechanisms to address new threats while strengthening cooperation across regional organizations.

8.5 GLOSSARY

1. **European Convention on Human Rights (ECHR):** A treaty aimed at protecting human rights and fundamental freedoms in Europe.
2. **European Court of Human Rights (ECHR):** The court responsible for enforcing the ECHR.
3. **Positive Obligation:** The duty of the state to take steps to protect individuals from violations of their rights.
4. **Council of Europe:** The international organization that promotes democracy, human rights, and the rule of law in Europe.

8.6 WORKSHEET BASED ON SLM

8.6.1 True/False

1. The European Convention on Human Rights (ECHR) was adopted in 1950. (**True**)
2. The European Court of Human Rights (ECHR) is the primary judicial body responsible for enforcing the ECHR. (**True**)
3. The decisions of the European Court of Human Rights are not binding on member states. (**False**)
4. The European Social Charter focuses exclusively on political rights. (**False**)
5. Individuals cannot directly file cases before the European Court of Human Rights. (**False**)
6. The European Union Charter of Fundamental Rights became legally binding in 2009 with the Treaty of Lisbon. (**True**)
7. All European Union member states are also members of the Council of Europe. (**True**)

8.6.2 Fill in the Blanks

1. The European Convention on Human Rights (ECHR) was adopted in the year **1950**.
2. The European Court of Human Rights (ECHR) is based in **Strasbourg, France**.
3. The European Social Charter was adopted in **1961** and revised in **1996**.
4. The Council of Europe is the organization that oversees the **European Court of Human Rights**.
5. The Charter of Fundamental Rights of the European Union became legally binding in the year **2009** with the Treaty of Lisbon.
6. The European Court of Human Rights ensures that member states comply with the **European Convention on Human Rights**.
7. The European Union adopted the Charter of Fundamental Rights in the year **2000**.

8.6.3 One-Word Answer Questions

1. **What is the European Convention on Human Rights (ECHR)?**

A treaty aimed at protecting human rights and political freedoms in Europe.

2. **What is the primary function of the European Court of Human Rights?**

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To ensure the protection of human rights in Europe as outlined in the European Convention on Human Rights.

3. When did the European Social Charter first come into force?

1961.

4. What is the European Social Charter?

A Council of Europe treaty that guarantees social and economic rights.

5. Which treaty made the EU Charter of Fundamental Rights legally binding?

The Treaty of Lisbon.

8.6.4 Very Short Answer Questions

1. What is the Council of Europe?

An international organization focused on promoting human rights, democracy, and the rule of law in Europe.

2. Who can file a complaint with the European Court of Human Rights?

Individuals, groups, or states.

3. Is the European Court of Human Rights part of the European Union?

No, it is part of the Council of Europe.

4. What is the difference between the ECHR and the EU Charter of Fundamental Rights?

The ECHR is a Council of Europe treaty that protects civil and political rights, while the EU Charter of Fundamental Rights covers a wider range of rights, including economic and social rights, and applies to EU law.

5. What is the significance of the European Court of Human Rights' judgments?

They are legally binding on the states that are party to the European Convention on Human Rights.

6. Can the European Court of Human Rights overrule national courts?

No, but it can find national courts in violation of the ECHR and require states to take corrective action.

7. How many judges sit on the European Court of Human Rights?

One judge from each member state of the Council of Europe.

8. What does the European Social Charter protect?

Social and economic rights, such as the right to work, health, education, and social protection.

8.7 SAQS

1. What is the role of the European Court of Human Rights?
2. What is the significance of the Osman case?
3. Explain the concept of “positive obligations” in the context of the ECHR.
4. How does the European Social Charter complement the ECHR?

8.7 REFERENCES

1. Council of Europe. (1950). European Convention on Human Rights.
2. European Court of Human Rights. Case Law Database.
3. Harris, D., O’Boyle, M., Bates, E., & Buckley, C. (2018). Law of the European Convention on Human Rights. Oxford University Press.
4. Mowbray, A. (2012). Cases, Materials, and Commentary on the European Convention on Human Rights. Oxford University Press.
5. Greer, S. (2006). The European Convention on Human Rights: Achievements, Problems, and Prospects. Cambridge University Press.
6. van Dijk, P., van Hoof, F., van Rijn, A., & Zwaak, L. (2018). Theory and Practice of the European Convention on Human Rights. Intersentia Publishing.
7. Wildhaber, L. (2007). The European Court of Human Rights 1998–2006: History, Achievements, Reform. Human Rights Law Journal.
8. Ovey, C., & White, R. (2010). Jacobs, White, and Ovey: The European Convention on Human Rights. Oxford University Press.
9. Leach, P. (2017). Taking a Case to the European Court of Human Rights. Oxford University Press.

10. Council of Europe. (2021). The European Court of Human Rights in Facts and Figures.

8.8 SUGGESTED READINGS

1. Council of Europe. (1950). European Convention on Human Rights.
2. Mowbray, A. (2007). Cases, Materials, and Commentary on the European Convention on Human Rights. Oxford University Press.
3. White, R., Ovey, C., & Jacobs, F. (2010). The European Convention on Human Rights. Oxford University Press.
4. Bates, E. (2010). The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights. Oxford University Press.
5. Greer, S. (2010). The European Convention on Human Rights: Achievements, Problems, and Prospects. Cambridge University Press.
6. Keller, H., & Stone Sweet, A. (2011). A Europe of Rights: The Impact of the ECHR on National Legal Systems. Oxford University Press.
7. Christoffersen, J., & Madsen, M. R. (2011). The European Court of Human Rights Between Law and Politics. Oxford University Press.
8. Leach, P. (2017). Taking a Case to the European Court of Human Rights. Oxford University Press.
9. Rainey, B., Wicks, E., & Ovey, C. (2021). Jacobs, White, and Ovey: The European Convention on Human Rights. Oxford University Press.
10. van Dijk, P., van Hoof, F., van Rijn, A., & Zwaak, L. (2018). Theory and Practice of the European Convention on Human Rights. Intersentia Publishing.

8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Discuss the importance of the European Convention on Human Rights in shaping human rights policies in Europe.
2. Critically evaluate the role of the ECHR in protecting environmental rights with reference to the López Ostra case.

UNIT 9

THE AMERICAN HUMAN RIGHTS FRAMEWORK

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9.1. INTRODUCTION

Human rights are fundamental to ensuring the dignity, freedom, and equality of all individuals. While global organizations like the United Nations play a crucial role in promoting and protecting these rights, regional systems have also emerged to address the specific challenges faced by different parts of the world. One such regional system is the Inter-American Human Rights System, which serves the countries of North, Central, and South America, as well as the Caribbean. This system is dedicated to protecting the rights of individuals within the American continent and responding to regional concerns, such as political instability, inequality, and indigenous rights.

The Inter-American Human Rights System was established under the Organization of American States (OAS) and is composed of two main institutions: the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights. These bodies work together to promote human rights, address violations, and ensure that the countries in the region uphold the rights enshrined in treaties like the American Convention on Human Rights.

What makes the Inter-American system unique is its focus on issues specific to the Americas. For example, Latin America has a history of political unrest and military dictatorships, which has led to widespread human rights abuses. Indigenous communities, which are especially vulnerable in countries like Bolivia, Guatemala, and Brazil, also find protection through this system. Similarly, the system has taken a proactive role in addressing gender-based violence and discrimination, ensuring that women and marginalized groups have a voice in human rights matters.

Despite its significant contributions, the Inter-American Human Rights System faces challenges. These include political interference, insufficient resources, and non-compliance by some member states. However, its existence provides a vital platform for individuals and communities to seek justice and accountability in a region where human rights remain an ongoing concern. Through this system, people have the opportunity to bring their cases to an international stage, leading to real change in the legal and social frameworks of the American States.

9.2. OBJECTIVES

By the end of this unit, you will be able to:

- 1) You will learn how human rights are protected in countries across North, Central, and South America. This includes understanding the key organizations, laws, and agreements that help defend the rights of people in this region.
- 2) You will get to know about two main organizations—the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. These are the groups that make sure human rights are respected and work to resolve violations.
- 3) Through real-world stories and examples, you will learn how these organizations have helped people whose rights were violated. You'll see how their rulings can change laws and improve lives.
- 4) You will explore the difficulties faced by the human rights system, like political issues and countries not following rulings. This will help you understand why it's not always easy to enforce human rights laws.
- 5) You will learn about how indigenous peoples and women use the Inter-American System to defend their rights. This includes understanding the special protections offered to these groups.
- 6) By the end of this unit, you'll be able to think critically about human rights violations in your own country or region. You will also learn how to act if you or someone else faces a human rights issue, such as filing a petition with the Inter-American Commission.

These objectives will guide you step by step in understanding the regional system, and how it can be used to defend human rights in the Americas.

9.3. REGIONAL HUMAN RIGHTS SYSTEMS

As a postgraduate student learning about human rights, you've probably come across global institutions like the **United Nations Human Rights Council**. But did you know that human rights are also protected on a regional level? Each region in the world faces its own unique challenges, and this is where regional systems, like the Inter-American Human Rights System, come into play.

Think of it this way: while the UN focuses on global human rights issues, regional systems like the one in the Americas can dive deeper into the specific concerns of countries in North, Central, and South America, as well as the Caribbean. For instance, imagine the issue of indigenous rights. Indigenous communities in countries like Bolivia or Guatemala often face land dispossession and discrimination. The Inter-American system provides these communities with a platform to voice their concerns, something that a global system might not be able to focus on as closely.

A great example is the **Awes Tingni case** from Nicaragua. The Awes Tingni community, an indigenous group, was fighting to protect their ancestral lands from being taken away by the government. They brought their case to the Inter-American Court of Human

Rights, and the Court ruled in their favour, affirming their rights to their lands. This decision not only protected the Awas Tingni but also set a precedent for indigenous rights throughout the Americas.

Similarly, the system plays a vital role in addressing gender-based violence, an issue that continues to affect women in many countries. Take the **Cotton Field case** in Mexico, where several women were murdered. The Inter-American Court ruled that the Mexican government had failed to protect these women and demanded legal reforms to improve safety for women in the country.

These examples illustrate how the Inter-American Human Rights System addresses regional concerns, providing a vital framework for defending rights in the Americas. Through this system, people facing human rights violations can seek justice that specifically reflects the complexities of their local issues.

9.4. THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

Imagine you live in a country where your rights are violated, and there seems to be no place to turn for justice. What if your local court refuses to hear your case, or worse, sides with the government that's violating your rights? This is where regional human rights systems like the **Inter-American Human Rights System (IAHRS)** step in to provide hope and justice.

The IAHRS was created specifically to address human rights issues in the Americas, a region that includes **North, Central, and South America**, as well as the **Caribbean**. It helps protect individuals from human rights violations when local systems fail to do so. Now, you might be wondering, "How exactly does this system work?" Let's break it down step by step.

The Inter-American Human Rights System has two main institutions:

1. **The Inter-American Commission on Human Rights (IACHR)**
2. **The Inter-American Court of Human Rights**

Think of these institutions like two watchdogs, each with its own role in ensuring justice and protecting human rights.

9.4.1 The Inter-American Commission on Human Rights (IACHR)

The Commission is the first point of contact for victims of human rights violations. Imagine a person facing violence or discrimination—they can submit a complaint to the IACHR. The Commission then investigates these complaints and makes recommendations to the governments involved.

For example, take the case of **Juan**, a journalist from Mexico who was threatened for reporting on government corruption. He filed a complaint with the IACHR, which investigated and pressured the Mexican government to ensure his safety.

The IACHR not only helps individual cases but also monitors human rights conditions in all member countries, issuing reports and promoting reforms to prevent future violations.

9.4.2 The Inter-American Court of Human Rights

Now, what if the recommendations from the Commission aren't enough, or the government refuses to act? That's where the Inter-American Court of Human Rights comes in. Unlike the Commission, which can only make recommendations, the Court has the power to issue binding rulings.

A powerful example is the **Velásquez Rodríguez case** in Honduras. Velásquez, a university student, was forcibly disappeared by government agents. After his family's complaint was heard by the Commission, the case was referred to the Court. The Court ruled that the Honduran government was responsible and ordered it to provide compensation to the family. This case not only brought justice to Velásquez's family but also set a precedent for other cases of forced disappearances in Latin America.

9.4.3 Why Two Institutions?

At this point, you might be thinking, "Why do we need both a Commission and a Court? Wouldn't one be enough?" The answer lies in the balance they provide.

The Commission serves as a first step—it helps process cases, investigates, and pushes governments to correct their actions. This is especially important for quicker responses and in situations where governments might be more likely to cooperate voluntarily.

However, when governments refuse to act, the Court steps in with its power to make legally binding decisions. These decisions carry the weight of law, meaning that governments must comply or face serious consequences in the international community.

Think for a moment: How does having both a Commission and a Court create a balanced system? Does it ensure better protection for individuals by giving more avenues to seek justice?

9.4.4 Real-Life Impact

The Inter-American System plays a crucial role in providing justice to individuals who might otherwise have no way of defending their rights. Imagine living in a country where the local courts ignore your pleas for justice. Knowing that you can turn to the IACHR or the Court brings hope.

For example, the **Cotton Field case** in Mexico, where women were systematically murdered in Ciudad Juárez, is another reminder of how these institutions can push governments to take action. The Court's ruling in this case forced Mexico to adopt new policies to protect women from violence, providing a safer environment for women across the country.

The IAHRs stands as a beacon of hope for individuals across the Americas, offering a way to challenge governments when their rights are violated. By having both a Commission and a Court, the system ensures that human rights are promoted, protected, and enforced, making the region a better place for all its citizens.

9.4.5 Inter-American Court of Human Rights

The Inter-American Court of Human Rights (IACHR), established in 1979, plays a crucial role in ensuring the protection of human rights across the Americas. It is headquartered in San José, Costa Rica and serves as the judicial arm of the Inter-American Human Rights

System. The Court works hand in hand with the Inter-American Commission on Human Rights (IACHR) to address violations and ensure that member states comply with the rulings designed to protect individuals' rights.

9.4.5.1 The Role of the Court

You might be wondering, what exactly does this Court do? Well, the Inter-American Court has a very important job; It issues binding rulings on human rights violations. In simpler terms, the Court doesn't just give advice or make suggestions; its decisions have real consequences. When the Court delivers a ruling, the countries involved are legally required to follow it. These decisions can change laws, policies, and even lead to significant reforms in how a country handles human rights.

Let's understand this with an example. Imagine if there's a case where someone's basic human rights have been violated, like freedom of speech or the right to a fair trial. The Inter-American Court steps in, investigates the matter, and if it finds that the country has indeed violated these rights, it issues a ruling that the government must follow. This might mean compensating the victims, changing unfair laws, or even holding powerful people accountable.

You might be curious about why this is significant. In many cases, governments or state forces are responsible for violations, and without international oversight, justice might never be served. The Court ensures that even those in power are held accountable, thus protecting vulnerable groups like indigenous communities, minorities, and women.

9.4.5.2 A Real Case from the Court

To help you understand this better, let's examine a real-world case handled by the Inter-American Court: *The Barrios Altos Case in Peru*.

In the early 1990s, Peru was facing internal conflict between state forces and insurgent groups. During this time, state forces carried out a massacre in Barrios Altos, where 15 civilians, including an 8-year-old boy, were killed. The government tried to cover it up, and for years, the families of the victims received no justice. This is where the Inter-American Court stepped in.

The victims' families brought their case to the Inter-American Court, and in 2001, the Court ruled that Peru had violated the victims' right to life. The Court's decision was not just symbolic; it required Peru to:

- 1) Hold those responsible accountable, including military officials.
- 2) Compensate the victims' families for the loss of their loved ones.
- 3) Abolish laws that granted immunity to military personnel involved in the massacre.

This ruling sent a powerful message, not just to Peru, but to other countries in the Americas: human rights violations will not go unpunished, and justice can be achieved even after years of neglect.

In summary, the Inter-American Court of Human Rights plays a vital role in the region. It not only addresses individual cases of injustice but also drives broader legal and social reforms.

Through its rulings, the Court empowers victims, holds governments accountable, and ensures that human rights remain protected across the Americas.

9.4.6 Major Human Rights Treatise in The Americas

As you start exploring human rights in the Americas, you might wonder: what ensures that countries respect human rights? The answer lies in treaties—legal agreements between nations that lay down the rules they must follow. When a country signs a treaty, it's like making a formal commitment, much like when you sign a contract.

9.4.6.1 Why Treaties Matter

Let's begin with the question: Why do treaties matter in human rights? Think of treaties as a framework that binds countries to follow certain standards. Just like a school has rules to ensure everyone is treated fairly, treaties set the rules for governments to protect their citizens. At the heart of the Inter-American Human Rights System is the American Convention on Human Rights (1969). This treaty is crucial because countries that ratify it agree to respect fundamental human rights, such as the right to life, liberty, and personal security.

For example, imagine you are signing a contract to rent an apartment. Once you sign, you agree to the terms, like paying rent and maintaining the apartment. Similarly, when a country signs the American Convention on Human Rights, it agrees to protect the rights of its citizens. If the country violates these rights, it is breaking the "contract," and the citizens or other countries can hold it accountable.

9.4.6.2 The Core of the American Convention on Human Rights

The American Convention on Human Rights guarantees several fundamental rights to individuals in the member states, including the following:

- a) **Right to Life** – This right obligates governments to protect the sanctity of life for every individual, ensuring that no one is deprived of their life arbitrarily or unlawfully. It establishes the responsibility of the state to prevent any actions that threaten the lives of its citizens.
- b) **Right to Personal Liberty** – This right ensures that individuals are protected from unjust or arbitrary imprisonment or detention. No one should be deprived of their freedom without a legitimate and lawful reason, and everyone has the right to contest any detention that does not adhere to legal standards.
- c) **Right to a Fair Trial** – Every person is entitled to be treated justly within the legal system. This means they have the right to an impartial and timely hearing, legal representation, and an opportunity to present their defense, ensuring the legal process is transparent and unbiased.

If someone in a country that has ratified the American Convention on Human Rights is unjustly imprisoned or deprived of their rights, they have the option to seek justice beyond their national courts. They can submit their case to the **Inter-American Commission on Human Rights (IACHR)**. The commission will evaluate the case and investigate the alleged violations. If necessary, and if the issue cannot be resolved, the case may be referred to the **Inter-American Court of Human Rights**, which can deliver binding judgments to enforce the protection of the

individual's human rights. The court serves as a final recourse to ensure that rights outlined in the convention are upheld across the Americas.

9.4.6.3 How Do Treaties Affect Everyday Life?

You might be thinking, "How do human rights treaties impact my life or the lives of others in their day-to-day experiences?" Though treaties can feel abstract, they actually play a huge role in protecting fundamental rights and freedoms. To make this concept clearer, let's explore some real-life examples where human rights treaties have made a tangible difference.

Example 1: The Right to Life and the Barrios Altos Massacre

Imagine living in a country where political unrest leads to widespread violence, and the government, instead of protecting its citizens, is responsible for killing innocent people. This is what happened in Peru during the 1990s, a period of intense political instability. One tragic event was the Barrios Altos massacre, where state forces unlawfully killed several individuals.

Peru had already signed the American Convention on Human Rights, which guarantees the right to life. Because of this, the victims' families were able to bring their case before the Inter-American Court of Human Rights. The Court ruled that the Peruvian government had violated this fundamental right and ordered the state to compensate the families of those killed.

This case is a powerful example of how human rights treaties can hold governments accountable. Without the American Convention, these families may have never received justice. In this case, the treaty wasn't just a piece of paper—it became a tool for real change, ensuring that governments cannot kill their own people without consequences.

Example 2: Right to Personal Liberty in Venezuela

Let's look at another example—this time in Venezuela. In recent years, the country has experienced political turmoil, and many individuals, particularly political opponents, have been detained without proper legal procedures. You might be thinking, "Isn't there something that protects people from this kind of treatment?"

Yes, there is. Under the American Convention on Human Rights, individuals have the right to personal liberty, which means that no one should be arrested or detained arbitrarily. Several cases from Venezuela have been brought before the Inter-American Commission on Human Rights, where the Commission highlighted how these detentions violated human rights. The Commission's involvement put pressure on Venezuela to uphold these fundamental rights, illustrating once again how human rights treaties serve to protect individuals, even when governments overstep their boundaries.

9.4.6.4 Other Important Treaties in the Americas

Besides the American Convention on Human Rights, there are other critical treaties in the Americas that address specific issues. Let's dive into two of these treaties and see how they shape the reality of human rights in the region.

A) Inter-American Convention to Prevent and Punish Torture (1985)

Torture is universally recognized as one of the most horrific violations of human dignity. The Inter-American Convention to Prevent and Punish Torture was adopted in 1985 to make it

crystal clear that torture is unacceptable under any circumstances. Countries that sign this treaty agree to take strong measures to prevent, investigate, and punish acts of torture.

Imagine a scenario where a detainee in a Latin American country reports being tortured by authorities. In a country that has ratified this treaty, this person can file a complaint with the Inter-American Commission on Human Rights, which will then investigate the claim. This gives victims a clear path toward justice, ensuring that law enforcement or military personnel who abuse their power are held accountable.

For instance, if reports of police torture surface in a country that has signed this treaty, human rights organizations can use the treaty to demand action. The government would be compelled to investigate the claims, punish those responsible, and implement reforms to prevent further instances of torture.

B) Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Belém do Pará Convention, 1994)

Gender-based violence is a serious issue that affects millions of women across the Americas. The Belém do Pará Convention specifically addresses this issue, focusing on the prevention and eradication of violence against women. Countries that ratify this treaty commit to serious efforts to prevent and address violence, whether it's physical, emotional, or sexual.

One of the most well-known cases under this treaty is the Cotton Field Case in Mexico. In this case, many women were brutally murdered in Ciudad Juárez, and local authorities failed to conduct proper investigations. Families of the victims, frustrated by the lack of action, took the case to the Inter-American Court of Human Rights. The Court found the Mexican government responsible for not doing enough to protect women and ordered the state to overhaul its investigation processes.

The Cotton Field Case was a turning point in the fight against gender-based violence in the region. It sent a strong message that governments can no longer turn a blind eye to violence against women. This is a clear example of how international treaties, like the Belém do Pará Convention, can push countries to improve their laws and practices in order to better protect vulnerable groups.

9.4.6.5 Treaties as Tools for Change

At this point, you might be starting to see how treaties are more than just international agreements—they are powerful tools that shape the way countries behave and protect their citizens. Without these treaties, individuals may have no recourse when their rights are violated. But with these agreements in place, people can turn to international bodies, like the Inter-American Court and Commission on Human Rights, to seek justice and hold their governments accountable.

9.4.6.6 How Do These Treaties Impact You?

You might wonder how all of this relates to you, as a student learning about human rights. Think of it this way: these treaties are like safety nets. Even if a government is corrupt or fails to protect its citizens, international agreements provide an extra layer of protection. Whether it's the right to life, the right to personal liberty, or protection against torture and gender-based violence, these treaties are in place to ensure that human dignity is upheld.

By understanding how these treaties work, you're not just learning about international law—you're gaining knowledge that can be used to advocate for justice, hold governments accountable, and protect the fundamental rights of individuals.

9.4.6.7 How Can These Treaties Be Enforced?

You might wonder, "What happens if a country doesn't follow a human rights treaty?" This is where the Inter-American Court of Human Rights steps in. Think of the Court as the enforcer of these treaties. When a country violates human rights, the case can be taken to the Court, which has the power to issue binding rulings. This means that the country must follow the Court's decision.

Let's look at an example to make it clearer. Imagine a country where the government unlawfully detains political activists. These activists can take their case to the Inter-American Court if their rights have been violated under the American Convention on Human Rights. Once the Court rules that the government acted unlawfully, it orders the country to release the detainees and possibly provide compensation. This is not just a suggestion—the country is obligated to comply.

A real-world example is the Barrios Altos case in Peru, where the government was held responsible for a massacre. The Court ruled that Peru had violated the right to life and ordered compensation for the victims' families. Peru was compelled to follow this ruling, or it risked facing international condemnation and sanctions.

If a country refuses to comply, it can face international pressure, including sanctions or diplomatic consequences. The Court's rulings carry significant weight, making sure that human rights are respected throughout the Americas. This system gives individuals a powerful tool to hold their governments accountable when national courts fail to deliver justice.

Hence, human rights treaties in the Americas, such as the American Convention on Human Rights, are crucial in protecting the rights and freedoms of individuals. These treaties create a legal framework that holds governments accountable and ensures that everyone has access to justice, liberty, and dignity. By learning about these treaties, you gain a deeper understanding of how human rights are protected and how these protections can make a real difference in people's lives.

9.4.7 Challenges of Enforcing Human Rights in the Americas

When you think of human rights, you probably assume that once laws and treaties are in place, those rights are automatically protected. However, in reality, the enforcement of human rights can be challenging, especially in regions like the Americas. Even though the Inter-American Human Rights System works to protect individuals, several obstacles prevent the full realization of these rights across North, Central, and South America. Let's take a closer look at some of these challenges, using real-life examples to make them easier to understand.

9.4.7.1 Political Interference and Instability

Imagine living in a country where the government doesn't fully respect human rights or even tries to manipulate the system to avoid accountability. This happens when political

leaders interfere with the enforcement of human rights laws, either by ignoring international court rulings or actively opposing them.

Take Venezuela, for example. In recent years, the country has experienced significant political unrest, and many cases of human rights abuses have been reported, such as the arbitrary detention of political opponents and protesters. Even though Venezuela is a member of the Inter-American Human Rights System, the government has repeatedly ignored decisions made by the Inter-American Court of Human Rights. As a result, victims of human rights violations in Venezuela have little recourse, as their government refuses to implement the rulings made by the international court.

This shows how political interference can make it almost impossible to enforce human rights, even when treaties and courts exist to protect them.

9.4.7.2 Limited Resources and Funding

Another major obstacle to enforcing human rights is the lack of resources and funding for human rights bodies, such as the Inter-American Commission on Human Rights (IACHR). Imagine trying to run a big project at school or university with hardly any funding—you wouldn't be able to achieve much, right? That's exactly what these institutions face.

The IACHR, which investigates human rights violations and provides recommendations, often struggles with insufficient funding. This lack of resources limits the Commission's ability to investigate cases, follow up on complaints, and monitor the human rights situation in various countries. For instance, if a large-scale human rights abuse occurs in a country, the IACHR might not have enough resources to send investigators or organize proper hearings.

One example of this occurred during the human rights crisis in Nicaragua in 2018, when the Commission was stretched thin trying to address the hundreds of cases filed by citizens alleging state violence and repression. Without proper funding, the ability to effectively respond to these complaints was severely hampered.

9.4.7.3 Non-Compliance by Member States

Let's say a country's government agrees to follow international treaties, but when the time comes, they ignore the rulings. This is called non-compliance, and it's a big problem in the Americas. Even though countries sign treaties and agree to protect human rights, some simply refuse to follow through.

A striking example is Brazil. The Inter-American Court of Human Rights ruled against the Brazilian government in the Gomes Lund case, where military forces had disappeared people during the military dictatorship. The Court ordered Brazil to investigate the disappearances and bring those responsible to justice. However, years later, Brazil has still not fully complied with the ruling. This lack of action highlights how difficult it can be to ensure that states enforce the Court's decisions.

9.4.7.4 Social and Economic Inequality

You might wonder, "How does poverty affect human rights enforcement?" The truth is, social and economic inequality plays a significant role in human rights violations, and it also makes enforcing rights even harder. In many Latin American countries, poor and marginalized groups, such as indigenous communities, are often the most vulnerable to human rights abuses, and they face greater challenges in accessing justice.

For example, in Guatemala, indigenous communities have long been targeted for land dispossession and other forms of discrimination. While these communities can file petitions with the Inter-American Commission, the process can be complicated and expensive, making it difficult for poorer groups to seek justice.

9.4.7.5 Corruption in Judicial and Law Enforcement Systems

Lastly, corruption in a country's judicial or law enforcement system can prevent the proper enforcement of human rights. When police, judges, or government officials are corrupt, they may prevent human rights cases from being investigated or resolved fairly.

In Mexico, for instance, widespread corruption within the police and judicial system has hindered the proper investigation of crimes such as the murders of women in Ciudad Juárez. Despite international pressure and treaty commitments, corruption has prevented justice from being served, especially in cases involving gender-based violence.

While the Inter-American Human Rights System provides critical tools for protecting rights, the challenges of political interference, lack of resources, non-compliance, social inequality, and corruption make enforcement difficult. However, understanding these obstacles is the first step in addressing them. By strengthening international cooperation, increasing funding, and improving accountability within governments, the region can work toward better enforcement of human rights for all.

9.4.8 Indigenous Rights in the Inter-American System

The rights of indigenous communities are a crucial focus of the Inter-American Human Rights System. Many countries in the Americas, including Brazil, Bolivia, and Guatemala, are home to large indigenous populations that have faced centuries of discrimination, exclusion, and land dispossession. The Inter-American System provides a platform for these communities to seek justice and protect their rights in ways that their national governments may not always offer.

9.4.8.1 Focus on Indigenous Communities

Imagine you are part of an indigenous community living in the Amazon rainforest in Brazil. Your people have lived there for centuries, but now, companies are coming in, trying to take over your ancestral lands for development or mining. You've protested, but the local government hasn't done much to protect your rights. What would you do?

This is where the **Inter-American Human Rights System** comes into play. Indigenous communities like yours can turn to the **Inter-American Commission on Human Rights (IACHR)** or the **Inter-American Court of Human Rights** to seek justice and protection for their land, culture, and basic human rights.

Awás Tingni Case: A Turning Point for Indigenous Rights

A key example of how the Inter-American System protects indigenous rights is the **Awes Tingni Case in Nicaragua**. The Awes Tingni are an indigenous group who lived on their ancestral lands for generations. But in the 1990s, the Nicaraguan government granted a logging company permission to exploit those lands without consulting the Awes Tingni people.

The Awes Tingni community took their case to the Inter-American Court of Human Rights, arguing that the government had violated their rights by failing to recognize their ancestral lands. The Court agreed and ruled in favour of the Awes Tingni, affirming their right to their ancestral lands.

This ruling was a landmark victory, not just for the Awes Tingni, but for indigenous communities across the Americas. The Court's decision set a precedent, ensuring that indigenous people have a right to their ancestral lands and that governments must respect those rights. It showed how the Inter-American System can help indigenous groups stand up to powerful governments and corporations that seek to exploit their resources.

9.4.8.2 What Makes Indigenous Rights Unique?

You might be wondering, what makes indigenous rights different from other human rights? Indigenous communities have unique connections to their land, culture, and traditions. For many, their land is not just a place to live—it's deeply tied to their identity and way of life. Losing their land means losing their culture, language, and heritage. This is why land rights are such a crucial part of indigenous rights.

The **American Declaration on the Rights of Indigenous Peoples**, adopted in 2016, specifically recognizes the rights of indigenous communities to their lands, territories, and natural resources. It also emphasizes the right of indigenous peoples to be consulted on any project or development that may affect their lands. This means that governments and corporations can't simply move in and take over indigenous lands without the community's consent.

9.4.8.3 Examples of Indigenous Rights Violations in the Americas

Unfortunately, cases like Awes Tingni are not unique. Many indigenous communities in the Americas face similar struggles. In **Brazil**, for instance, indigenous communities in the Amazon rainforest are constantly fighting against illegal logging, mining, and deforestation, which threaten their land and way of life.

In **Bolivia**, indigenous groups have protested large infrastructure projects like highways and dams that are built on their lands without proper consultation. In **Guatemala**, indigenous communities have faced violence and displacement due to the activities of mining companies.

These examples highlight the importance of the Inter-American System in protecting the rights of indigenous peoples when national governments fail to do so. Without this system, many indigenous communities would have little recourse against the powerful forces that threaten their lands and livelihoods.

9.4.8.4 How Can Indigenous Communities Use the Inter-American System?

If an indigenous community feels that their rights are being violated, they can bring their case to the **Inter-American Commission on Human Rights**. The Commission can

investigate the case and make recommendations to the government. If the government doesn't act, the case can be taken to the **Inter-American Court**, which has the power to issue binding rulings.

For example, if a community in **Guatemala** is being forced off their land for a mining project, they can file a complaint with the IACHR. If the case goes to the Court, and the Court rules in their favour, the government would be obligated to stop the project and compensate the community.

The Inter-American Human Rights System provides a vital lifeline for indigenous communities in the Americas. Through landmark cases like **Awás Tingni**, the system has shown its power to protect the unique rights of indigenous peoples, especially their connection to their lands. As indigenous communities continue to face discrimination and land dispossession, the Inter-American System remains a crucial tool for seeking justice and safeguarding their way of life.

9.4.9 Gender and Human Rights

The term “gender and human rights” in the Americas encompasses more than just formal equality in areas like voting rights or pay equity. It involves the broader struggle against gender-based violence, discrimination, and the exploitation of women. The Inter-American Human Rights System, through various treaties and landmark cases, has played a pivotal role in advancing and protecting women's rights across the region.

9.4.9.1 Women's Rights in the Americas

The Inter-American Human Rights System comprises two key bodies—the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR)—which work together to address violations of human rights, including gender-based issues.

9.4.9.2 The Belém do Pará Convention

One of the most important treaties within this system for addressing women's rights is the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (commonly known as the Belém do Pará Convention, 1994). This treaty obligates state parties to prevent, investigate, and punish violence against women in both the public and private spheres. It recognizes that violence against women is a violation of their fundamental human rights and freedoms.

9.4.9.3 Case Laws

A) **González v. Mexico (2009)**

Background: Known as the “Cotton Field Case” (which we will not focus on), this case dealt with the disappearance and murder of women in Ciudad Juárez, Mexico.

Significance: This case set a precedent by holding the Mexican state responsible for failing to protect women from gender-based violence and its obligations under the Belém do Pará Convention.

B) **María da Penha v. Brazil (2001)**

Background: In this case, the victim, *María da Penha*, was a Brazilian woman who was left paraplegic after enduring years of domestic violence at the hands of her husband. Despite this, the Brazilian legal system failed to provide her with justice for many years.

Ruling: The IACHR found that Brazil had violated its obligations under the *Belém do Pará* Convention by failing to take adequate measures to prevent domestic violence and provide remedies to victims.

Impact: This case led to the creation of the *Maria da Penha* Law in Brazil, one of the most comprehensive domestic violence laws in Latin America, improving protections for women and ensuring swifter judicial processes.

C) *Jessica Lenahan (Gonzales) v. United States (2011)*

Background: Jessica Lenahan filed a petition with the IACHR after U.S. police failed to enforce a restraining order against her estranged husband, who later murdered her three daughters. After exhausting legal remedies in the U.S., she took her case to the Inter-American Commission.

Ruling: The IACHR determined that the United States had violated its human rights obligations, including the right to equal protection under the law. The Commission emphasized that the state failed in its due diligence to protect Lenahan and her daughters from domestic violence.

Impact: Although the U.S. has not fully implemented the recommendations from the IACHR, this case brought significant attention to the need for stronger domestic violence protections in the country.

D) *Véliz Franco et al. v. Guatemala (2014)*

Background: The case involved the kidnapping and murder of Claudina Isabel Véliz Franco, a university student in Guatemala. The IACHR found that the Guatemalan authorities failed to investigate her murder with due diligence, discriminating based on gender.

Ruling: The Court held that Guatemala violated the right to life, personal integrity, and judicial protection of Véliz Franco, underscoring the state's obligation to combat violence against women.

Impact: The ruling emphasized the importance of adopting gender-sensitive investigation protocols and policies, aiming to address Guatemala's broader problem of femicides and impunity for violence against women.

9.4.9.4 Treaties and Their Importance

In addition to these landmark cases, the *Belém do Pará* Convention and other instruments under the Inter-American system create binding obligations for states to not only provide legal frameworks for women's protection but also to actively implement policies, training, and monitoring mechanisms to prevent violence and ensure justice.

9.4.9.5 Broader Impact on Women's Rights

These cases, along with others within the Inter-American Human Rights System, showcase how gender-specific issues such as violence, discrimination, and lack of judicial protection remain central to human rights discourse in the Americas. They also illustrate the transformative power of legal interventions when it comes to addressing deeply ingrained social and cultural practices that marginalize women.

The Inter-American Court of Human Rights, through these cases, has consistently emphasized that states have an obligation to adopt comprehensive policies and measures aimed at eradicating gender-based violence. Failure to do so not only violates treaties like the Belém do Pará Convention but also broader principles enshrined in international human rights law.

Through the Inter-American Human Rights System and key treaties like the Belém do Pará Convention, women's rights have been considerably strengthened in the Americas. Landmark cases such as *María da Penha v. Brazil* and *Véliz Franco v. Guatemala* demonstrate the system's critical role in holding states accountable for their failure to protect women from violence and discrimination. These rulings have led to legal reforms and social changes, advancing women's rights and ensuring that gender-based violence remains a focal issue for human rights protection across the region.

9.4.10 Steps to Take When Human Rights Are Violated

When human rights are violated, victims have various avenues they can pursue to seek justice and redress. The Inter-American Human Rights System, through its Commission and Court, provides a framework for addressing violations in the Americas. Here's a step-by-step guide for how individuals or groups can take action:

Step 1: Seek Local Remedies

Before turning to international bodies, victims of human rights violations must first exhaust domestic remedies. This means they should bring their case before local courts and authorities to seek justice under their country's laws. The idea behind this requirement is that national systems should have the opportunity to resolve issues before international institutions intervene. However, if local courts fail to provide effective remedies, victims can proceed to the next step.

Step 2: Approach the Inter-American Commission on Human Rights (IACHR)

The Inter-American Commission is the first point of contact within the Inter-American Human Rights System. It serves as an investigative body, receiving complaints from individuals, groups, or organizations about alleged human rights violations in member states. To file a petition:

- a) The petitioner must prove that local remedies have been exhausted or that domestic recourse was unavailable or ineffective.
- b) The violation must pertain to rights protected by the American Convention on Human Rights or other relevant treaties.

Once a petition is filed, the Commission can take several actions:

- a) It may request more information from the petitioner or the state.
- b) It may hold hearings to gather testimony and evidence.

- c) If the Commission finds that a violation has occurred, it can issue recommendations to the state for reparations, which may include compensation, policy reforms, or institutional changes.

Step 3: Appeal to the Inter-American Court of Human Rights (IACHR)

If the state fails to comply with the Commission's recommendations, the case may be referred to the Inter-American Court of Human Rights. Only states and the IACHR can submit cases to the Court, so individuals must rely on the Commission to forward their cases.

- a) The Court has binding authority, meaning its judgments are final and enforceable.
- b) The Court can order various reparations, including compensation for victims, public apologies, or legal reforms within the state.

Step 4: Implementing the Court's Decisions

If the Court rules in favor of the victim, the state must comply with the decision. While the Court cannot directly enforce its rulings, there is significant international pressure for states to adhere to judgments. The IACHR monitors compliance with the Court's decisions, and non-compliance can lead to diplomatic and reputational consequences for the state involved.

9.4.11 Future of the Inter-American Human Rights System

As the world changes, so too must the institutions that protect human rights. The Inter-American Human Rights System, which has been instrumental in addressing critical issues like gender-based violence, extrajudicial killings, and indigenous rights, faces both challenges and opportunities as it looks to the future.

9.4.11.1 Emerging Challenges

A) Climate Change and Environmental Rights

Climate change is an emerging human rights issue. Many communities in the Americas, particularly indigenous and rural populations, are facing threats from deforestation, environmental degradation, and natural disasters. These environmental issues can infringe on basic human rights such as the right to life, health, and housing. The future of the Inter-American System may involve taking a more active role in addressing environmental justice by holding states accountable for climate-related human rights violations.

B) Digital Rights and Privacy

As technology advances, digital rights, including the right to privacy and freedom of expression, are increasingly becoming human rights concerns. Issues such as government surveillance, data breaches, and misinformation campaigns pose serious risks to democracy and individual freedoms. The Inter-American System will need to adapt to these new challenges, potentially creating new guidelines or expanding its interpretations of existing rights to include protections for digital privacy and expression.

9.4.11.2 Opportunities for Reform

A) Strengthening Compliance Mechanisms

One of the system's weaknesses has been ensuring that states comply with the rulings of the Court and recommendations of the Commission. Strengthening mechanisms for compliance, such as increasing diplomatic pressures, involving regional organizations like the Organization of American States (OAS), and encouraging civil society participation, could improve the effectiveness of the system.

B) Addressing Backlog and Delays

The Commission and Court often face significant backlogs in processing cases, which can delay justice for victims of human rights violations. One potential reform could be increasing the resources available to these bodies, allowing them to handle cases more efficiently and reduce wait times for victims seeking redress.

9.4.11.3 The Role of Civil Society

Civil society organizations (CSOs) and non-governmental organizations (NGOs) will continue to play a crucial role in the Inter-American System's future. By bringing attention to violations, filing petitions, and advocating for victims, these groups serve as a bridge between the system and the affected populations. Strengthening the relationship between civil society and the human rights system will be essential for continued progress.

The Inter-American Human Rights System, while facing significant challenges, remains a powerful tool for protecting and advancing human rights in the Americas. As emerging issues like climate change and digital rights take center stage, the system must evolve and adapt to continue its mission of safeguarding the dignity and rights of all individuals in the region.

9.5 SUMMARY

The Inter-American Human Rights System, comprising the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR), plays a crucial role in protecting and advancing human rights across the Americas. When human rights are violated, individuals must first seek justice through local remedies. If these are ineffective, victims can appeal to the IACHR, which investigates and may issue recommendations to the state. If the state fails to comply, the case may be referred to the IACHR, which has binding authority to order reparations, such as compensation or legal reforms.

One key area of focus for the system is protecting women's rights, particularly through the Belém do Pará Convention, which addresses gender-based violence. Landmark cases like *María da Penha v. Brazil* and *Véliz Franco v. Guatemala* have led to significant legal reforms in the region to better protect women from violence and discrimination.

As the system looks to the future, it faces challenges such as addressing the impact of climate change on vulnerable communities and ensuring protections for digital rights in the context of privacy, surveillance, and online freedoms. Potential reforms include strengthening compliance mechanisms, reducing case backlogs, and fostering closer collaboration with civil society organizations.

While the Inter-American Human Rights System has made significant progress in holding states accountable for human rights violations, it must continue to evolve to meet the emerging challenges of the 21st century, such as environmental justice and technological rights.

9.6 GLOSSARY

1. **Human Rights:** Fundamental rights and freedoms that all individuals are entitled to, regardless of nationality, gender, ethnicity, or religion, as recognized by international law.
2. **Inter-American Commission on Human Rights (IACHR):** An autonomous organ of the Organization of American States (OAS) that promotes and protects human rights in the Americas. It investigates allegations of human rights violations and makes recommendations to member states.
3. **Inter-American Court of Human Rights (IACtHR):** A regional human rights tribunal that rules on cases of human rights violations in the Americas. Its judgments are binding on member states of the OAS.
4. **Belém do Pará Convention:** The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, adopted in 1994, addressing the rights of women and obligating states to prevent and punish violence against women.
5. **Exhaustion of Domestic Remedies:** A legal principle requiring that individuals seek justice through their national courts and remedies before appealing to international human rights bodies.
6. **Reparations:** Actions taken by a state to redress violations of human rights, such as compensation, legal reforms, or public apologies.
7. **Digital Rights:** Rights related to the protection of personal data, privacy, freedom of expression, and access to information in the digital realm.
8. **Climate Justice:** A movement and legal framework focusing on addressing the unequal impacts of climate change on vulnerable populations, emphasizing the need for environmental and human rights protection.
9. **Civil Society Organizations (CSOs):** Non-governmental organizations and advocacy groups that play a role in bringing human rights violations to light, petitioning international bodies, and supporting victims.

9.7 SELF-ASSESSMENT QUESTIONS (SAQs)

9.7.1 True/False

1. The Inter-American Commission on Human Rights (IACHR) is indeed an autonomous body of the Organization of American States (OAS). **(True)**
2. The Inter-American Court of Human Rights is based in San José, Costa Rica, not Washington, D.C. **(False)**
3. Both individuals and member states can file complaints to the Inter-American Commission on Human Rights. **(False)**
4. The Inter-American Commission on Human Rights was established after the Universal Declaration of Human Rights. **(False)**

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5. The Inter-American Court of Human Rights can issue binding judgments for states that have accepted its jurisdiction. **(True)**
6. The American Declaration on the Rights and Duties of Man was the first international human rights instrument of a general nature in the Americas. **(True)**
7. The Inter-American Commission on Human Rights can issue precautionary measures to prevent serious harm. **(False)**
8. The American Convention on Human Rights includes civil and political rights, with a separate protocol for economic, social, and cultural rights. **(True)**

9.7.2. Fill in the Blanks

1. The American Convention on Human Rights was adopted in **1969**.
2. The Inter-American Court of Human Rights is located in **San José, Costa Rica**.
3. The Inter-American Commission on Human Rights has **seven** members, elected by the General Assembly of the OAS.
4. The purpose of the Inter-American Court of Human Rights is to interpret and enforce the **American Convention on Human Rights**.
5. The American Declaration on the Rights and Duties of Man was adopted in **1948**.
6. The Inter-American Commission on Human Rights has the authority to conduct **on-site** visits to member states.
7. The primary goal of the Inter-American human rights system is to protect and promote **human rights** in the Americas.

9.7.3. Short Answer Questions

1. What is the role of the Inter-American Commission on Human Rights (IACHR) in addressing human rights violations?
2. What is the Belém do Pará Convention, and how does it protect women's rights in the Americas?
3. Explain the significance of exhausting domestic remedies before appealing to the Inter-American Human Rights System.
4. What emerging challenges could the Inter-American Human Rights System face in the future?
5. What are reparations, and how are they implemented within the Inter-American Human Rights System?

9.8 REFERENCES

1. Inter-American Commission on Human Rights (IACHR). "About the IACHR." Organization of American States (OAS), www.oas.org/en/iachr.
2. Inter-American Court of Human Rights. "The Court's Role and Procedures." IACtHR, www.corteidh.or.cr.

3. Belém do Pará Convention (Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women), 1994. Organization of American States (OAS).
4. Organization of American States (OAS). “Climate Change and Human Rights in the Americas.” OAS, www.oas.org/climate.
5. Case of María da Penha v. Brazil, IACHR, Report No. 54/01, Case 12.051, April 16, 2001.
6. Véliz Franco et al. v. Guatemala, Judgment, Inter-American Court of Human Rights, 2014.
7. Jessica Lenahan (Gonzales) v. United States, Petition 1490-05, IACHR Report No. 80/11, July 21, 2011.
8. Buergenthal, Thomas, et al. International Human Rights in a Nutshell. West Academic Publishing, 2017.
9. Cavallaro, James, and Stephanie Brewer. “Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court.” American Journal of International Law, vol. 102, no. 4, 2008, pp. 768–827.
10. Grossman, Claudio. “The Inter-American System of Human Rights: Challenges for the Future.” Human Rights Brief, vol. 11, no. 1, 2003, pp. 1-8.
11. Organization of American States (OAS). “The Inter-American Commission on Human Rights and the Future of Human Rights in the Americas.” Annual Report of the IACHR, 2022.
12. Pasqualucci, Jo M. The Practice and Procedure of the Inter-American Court of Human Rights. Cambridge University Press, 2013.
13. Shelton, Dinah. Regional Protection of Human Rights. Oxford University Press, 2008.

9.9 SUGGESTED READINGS

1. Cavallaro, James, and Stephanie Brewer. “Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court.” American Journal of International Law, vol. 102, no. 4, 2008, pp. 768–827.
2. Melish, Tara J. Protecting Economic, Social, and Cultural Rights in the Inter-American Human Rights System. Transnational Publishers, 2007.
3. Engstrom, Par. The Inter-American Human Rights System: Impact Beyond Compliance. Palgrave Macmillan, 2018.
4. Kumar, C. Raj. Human Rights and Development: Law, Policy, and Governance. LexisNexis, 2006.

9.10 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What is the difference between the roles of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights?
2. Discuss the importance of the Belém do Pará Convention in advancing gender rights in the Americas.

UNIT 10

**REGIONAL PROTECTION OF HUMAN RIGHTS IN AFRICA
AND THE ARAB WORLD**

10.1 INTRODUCTION

10.2 REGIONAL HUMAN RIGHT SYSTEM IN AFRICA

10.3 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS OR

BANJUL CHARTER OR AFRICAN CHARTER

10.4 THE AFRICAN COMMISSION ON HUMAN RIGHTS

10.5 THE AFRICAN COMMISSION ON HUMAN RIGHTS

10.6 ARAB CHARTER ON HUMAN RIGHTS

10.7 REGIONAL HUMAN RIGHTS SYSTEM IN THE ARAB WORLD

10.8 ARAB CHARTER ON HUMAN RIGHT

10.9 CRITICISM OF THE ARAB CHARTER

10.10 CONCLUSION

10.11 References

10.12 Glossary

10.13 Short Answer Questions

10.14 Terminal Questions

10.1 INTRODUCTION

In 1981, the Organization of African Unity (OAU), which was established with the main objective to rid the continent from colonization and apartheid, adopted the African Charter on Human and Peoples' Rights (also known as the Banjul Charter or the African Charter) to stand as the primary human rights instrument for the African Continent. The OAU has since been replaced by the African Union (AU), however, its legacy continues to contribute to the human rights protection systems that were created under its aegis.

10.2 REGIONAL HUMAN RIGHT SYSTEM IN AFRICA

The African System, like the Inter-American System and the European System (as originally designed), is composed of two entities: a Commission and a Court. These entities are tasked with the interpretation and application of a number of regional human rights instruments (in addition to the Banjul Charter). Some of these are: (a) African Charter on the Rights and Welfare of the Child, (b) Protocol on the African Human and Peoples' Rights Court, (c) Protocol to the African Charter on the Rights of Women in Africa, (d) Convention on the Prevention and Combating of Terrorism, 1999, (e) Convention for the Protection and Assistance of Internally Displaced Persons, 2009. Now we will be discussing the role and function of the Commission and the Court.

10.3 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS OR BANJUL CHARTER OR AFRICAN CHARTER

The Banjul Charter was adopted in 1981. Since then, Africa has experienced scores of human rights catastrophes of extreme proportions: the scourge of poverty, the HIV/AIDS pandemic, the 1994 Rwandan genocide, the Darfur crisis, and civil wars in Somalia, Sierra Leone among others. Through these tough times, the Banjul Charter has stood the test of time and has helped steer Africa from the age of human wrongs into the new age of human rights. The Charter sets standards and establishes the groundwork for the promotion and protection of human rights in Africa. The Charter has also dealt a big blow to state sovereignty by emphasizing that human rights violations could no longer be swept under the carpet of internal affairs. Therefore, one can only imagine what the continent would have been without the Charter.

Accordingly, let me give you an overview of the provisions contained in the Banjul Charter.

- Article 2: Every individual shall be entitled to enjoyment of rights without any distinction of any kind whatsoever.
- Article 3: Every individual shall be equal before the law. Every individual shall be entitled to equal protection of law.
- Article 4: Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his right.
- Article 5: The inherent dignity of every human being must be recognized. All forms of exploitation / degradation of man shall be prohibited (including torture, slavery etc.)
- Article 6: Every individual to have the right to liberty and security of his person; No arbitrary arrest / detention.

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- Article 7: Every person shall have a right to an appeal against violation of fundamental rights, right to be presumed innocent until proved guilty, right to be defended by counsel of own choice and the right to be tried within a reasonable time by an impartial court / tribunal.
- Article 8: Everyone to have the freedom of conscience, profession and free practice of religion, subject to law and order.
- Article 9: Every person to have a right to express/disseminate his opinions within law.
- Article 10: Every individual to have the right of free association provided he abides by the law
- Article 11: Every individual to have a right of free assembly with others, subject to necessary restrictions placed by law.
- Article 12: Every individual to have the right to freedom of movement, right to leave / return a State subject to restrictions placed by law; Mass expulsion of non-nationals to be prohibited; Every individual has a right to seek asylum, when persecuted.
- Article 13: Every citizen to have a right to participate freely in the government of his country, have right to equal access to public services / public property.
- Article 14: Everyone has the right to property. It may be encroached upon in the interest of public need / general interest of the community.
- Article 15: Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.
- Article 16: Every individual shall have the right to enjoy the best attainable state of physical and mental health.
- Article 17: Every individual shall have the right to education, to have his moral / traditional values protected and be able to take part in cultural life of his community.
- Article 18: States shall ensure that every family is protected, discrimination against women is eliminated and the aged / disabled have the right to special measures of protection keeping with their needs.
- Article 19: All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.
- Article 20: All peoples to have the inalienable right to self-determination; Colonized or oppressed peoples to have a right to free themselves, along with the right of assistance from State Parties.
- Article 21: All peoples to have a right to freely dispose of their wealth and natural resources, subject to obligation of promoting economic cooperation based on mutual respect / equitable exchange and principles of international law. State parties to eliminate all forms of foreign exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources.
- Article 22: All people to have a right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
- Article 23: All peoples to have the right to national and international peace and security.
- Article 24: All peoples to have the right to a general satisfaction environment favourable to their development.
- Article 28: Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

- Article 29: Every individual shall also have the duty: to respect / maintain his parents, to serve his national community, not to compromise the security of his State, to contribute to the promotion and achievement of African unity, to pay taxes imposed by law, to preserve the territorial integrity of his country, among others.

10.4 THE AFRICAN COMMISSION ON HUMAN RIGHTS

The African Charter established the African Commission on Human and Peoples' Rights. The Commission was inaugurated on November 2, 1987 and has its Secretariat in Banjul, The Gambia. The Commission consists of eleven members elected by the AU Assembly from experts nominated by the State parties to the Charter. Once elected, the commissioners serve in their personal capacity and not as representatives of their respective countries. The Commission elects its Chairperson and Vice- Chairperson as the Bureau of the Commission. It is this Bureau that coordinates the activities of the Commission and supervises and assesses the work of the Commission's Secretariat.

The mandate of the Commission are listed down under Article 45 of the African Charter, as follows:

(a) Carrying out sensitization, public mobilization and information dissemination on human rights through seminars, symposia, conferences and missions, (b) Ensuring protection of human and peoples' rights through its communication procedure, friendly settlement of disputes, state reporting (including consideration of NGOs shadow reports), urgent appeals and other activities of special rapporteurs and working groups and missions, and (c) Interpreting the provisions of the Charter at the request of a State party or an individual.

Now, as seen in the case of Inter-American System, whereby the IACHR is charged with receiving individual petitions for human rights violations, the African Commission is also tasked with a similar obligation, though it's called a communication. This Communication is one of the mechanisms whereby it receives complaints from states against another state, or by individuals and NGOs against one or more states on alleged violations of human rights in accordance with its mandate under Articles 48, 49 and 55 of the African Charter. The most important aspect of this Communication system is that any individual may bring a communication before the Commission. The African Charter is silent on the issue of standing and the Rules of Procedure of the Commission does not provide for a victim requirement. Therefore, a communication may be submitted by the victim or anyone on their behalf, as well. However, it must be noted that a communication can only be brought against a state that has ratified the African Charter and no one else.

Now, before a communication is admitted by the Commission, it must comply with the following requirements: (a) the Author must have been indicated, (b) must not be in disparaging or insulting language, (c) must not solely be based on media reports, (d) domestic remedies must have been exhausted unless, either the domestic procedure is unduly prolonged or rights claimed are not guaranteed by domestic laws., (e) must be submitted within a reasonable time after exhausting local remedies, (f) issue raised must not have been settled under other UN or AU procedures.

With respect to the functioning of the Commission, it must also be noted that once a communication has been admitted, the Commission may direct the state concerned to take one or more provisional measures pending the finalization of the communication. These measures

are necessary to prevent irreparable damage being done to the victim of an alleged violation. If the state fails to comply with a request by the Commission for the adoption of provisional measures after a period specified, the Commission may refer the communication to the African Court of Human and Peoples' Rights.

10.5 THE AFRICAN COMMISSION ON HUMAN RIGHTS

The African Court on Human and Peoples' Rights (African Court) was established through a Protocol to the African Charter, which was adopted in 1998 and only entered into force in 2004. The Court was established in order to complement the protective mandate of the Commission. Its decisions are final and binding on state parties to the Protocol.

The Court consists of 11 judges elected by the AU Assembly from a list of candidates nominated by member states of the AU, who serve the Court for a period of six years and are eligible for re-election only once. Also, the Court's jurisdiction applies only to states that have ratified the Court's Protocol. The Court may entertain cases and disputes concerning the interpretation and application of the African Charter, the Court's Protocol and any other human rights treaty ratified by the state concerned. The Court may also render advisory opinion on any matter within its jurisdiction. The advisory opinion of the Court may be requested by the AU, member states of the AU, AU organs and any African organization recognized by the AU.

It must also be noted that individuals may directly petition the African Court, as well. However, this feature of allowing individuals to approach the African Court has been diluted to a great extent by the Court's Protocol. Article 34 (6) of the said Protocol lays down that at the time of ratification of the said Protocol, the States shall make a declaration accepting the competence of the Court to receive cases under Article 5 (3) of the Protocol. It further states that the African Court shall not receive any petition under Article 5 (3) involving a State Party which has not made any such declaration. This means that until and unless States make a declaration accepting that individuals may also approach the African Court directly for human rights violations, individuals may not approach the Court against that State.

10.6 REGIONAL HUMAN RIGHTS SYSTEM IN THE ARAB WORLD

In 1945, Egypt, Iraq, Transjordan (now Jordan), Lebanon, Saudi Arabia and Syria signed a pact to create what is known as the League of Arab States. Over the years, the number of members of this League has increased by a considerable margin so much so that now their agreements generate considerable amount of discussion and which is why it is important to learn about their system of protection of human rights, as well.

Now, the Arab Charter on Human Rights was adopted by the League of Arab States in 1994. However, none of the member states had ratified the Charter. Therefore, the Charter was later updated and led to the amended version by the Arab summit in Tunis in 2004. The 2004 version of the Charter (known as the Arab Charter on Human Rights) only entered into force in March, 2008.

10.7 ARAB CHARTER ON HUMAN RIGHTS

The Arab Charter contains a total of fifty-three articles, including provisions that put a positive obligation on States to provide the very basic rights to its citizens and on the other hand, it also puts negative obligations on to States to not to interfere with the lives of

individuals. It protects a number of traditional human rights (as laid down under the UDHR) including the principle of non-discrimination (Article 3), the right to life (Article 5), equality before law (Article 11), prohibits any form of slavery, trafficking in human beings, and exploitation of children in armed conflicts (Article 10). It also provides that every citizen has the right to take part in public life, to stand for election and choose his or her representative in impartial elections (Article 24), and protects privacy of family, home and correspondence (Article 21).

Another field where significant improvements have been achieved is administration of justice (Article 10) and the adoption of the agreed fair trial norms and principles (Article 16). The Charter includes a general statement guaranteeing the independence of the judiciary and protecting it from interference, pressure or threat (Article 12); it enshrines the right to liberty and security of persons, prohibits arbitrary arrest and detention (Article 14), torture and cruel, inhuman or degrading treatments, which are considered as crimes not subject to any statute of limitations, and sets out the right to reparation for victims of torture (Article 8). It also prohibits medical experimentation without the consent of the persons concerned (Article 9), restricts capital punishment to the most serious crimes (Article 6), and sets out the principles of legality of offences and penalties (Article 15), the non bis in idem principle (Article 19), the prohibition of imprisonment for civil debt (Article 18) and the humane treatment of persons deprived from their liberty (Article 20). In other areas, the Charter innovates and appears to be ahead of other international instruments, by enshrining the rights of persons with mental or physical disabilities (Article 40) and also by outlawing violence against women and children in the family (Article 33, paragraph 2).

Looking at the foregoing, it could conclusively be said that the Arab Charter is an exhaustive bucket of rights! Nevertheless, let us look at some of the critiques of this Charter.

10.8 CRITICISM OF THE ARAB CHARTER

Now, the most important milestone that has been realized by this Charter is that after decades of gestation, finally the Arab states have adopted their own binding instrument on human rights. Having said that, the Arab Charter has been widely criticized for multiple ambiguities and deficiencies in the formulation of its Articles. Let us have a look at some of these.

The foremost criticism of the Arab Charter is that it does not provide any effective mechanism for anyone to seek any redress whatsoever against a violation of his/her human right. All it does is create an Arab Human Rights Committee entrusted only to receive governmental reports by States every three years on measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof. Thereafter, the Charter provides that the Committee shall discuss the report, comment thereon and make the necessary recommendations.

Now, compared to the enforcement mechanisms provided by the European, Inter-American and the African systems, which have granted their supervising bodies the mandate to receive complaints from individuals, the solution adopted in the Arab Charter is the weakest and is indicative of a deeply-rooted distrust vis-à-vis an effective human rights system.

Its other criticism stems from the deficiencies in formulation of its Articles. This is notably with respect to: (a) the right to equality between men and women, whereby Article 3 categorically recognizes the framework of positive discrimination established in favour of women by the Islamic Shariah, (b) the provision prohibiting capital punishment for those under 18 years of age, where by it uses the claw-back clause unless provided otherwise in national law, (c) the wording of the Preamble which says rejecting all forms of racism and Zionism which commentators argue equates Zionism to racism.

10.9 CONCLUSION

From the foregoing, it is clear that the Arab Charter is a positive step forward in line with the international human rights standards. However, given the absence of an effective enforcement mechanism and lacunae in drafting of its articles, questions still linger as to the effectiveness of such a Charter. Having said that, the initiative is commendable and must be strengthened further by actions of multiple stake-holders.

10.10 References

Primary Sources

1. African Charter on Human and Peoples' Rights (Banjul Charter), 1981.
2. Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, 1998.
3. Arab Charter on Human Rights, 2004.
4. Constitutive Act of the African Union, 2000.
5. Charter of the League of Arab States, 1945.
6. Universal Declaration of Human Rights, 1948.

Books

1. Malcolm N. Shaw, *International Law* (Cambridge University Press).
2. Henry J. Steiner, Philip Alston & Ryan Goodman, *International Human Rights in Context*.
3. Rhona K. M. Smith, *Textbook on International Human Rights*.
4. Dinah Shelton, *Regional Protection of Human Rights*.
5. Manisuli Ssenyonjo, *Economic, Social and Cultural Rights in International Law*.

10.11 Suggested Reading

1. Malcolm N. Shaw – *International Law*.
2. Dinah Shelton – *Regional Protection of Human Rights*.
3. Rhona K. M. Smith – *Textbook on International Human Rights*.
4. Henry J. Steiner, Philip Alston & Ryan Goodman – *International Human Rights in Context*.
5. Christof Heyns – *Human Rights Law in Africa*.
6. Frans Viljoen – *International Human Rights Law in Africa*.
7. Manisuli Ssenyonjo – *Economic, Social and Cultural Rights in International Law*.

10.12 Glossary

African Charter	The principal regional human rights treaty in Africa adopted in 1981.
African Commission	The body responsible for promoting and protecting human rights under the African Charter.
African Court	Regional judicial body established to enforce the African Charter.
Arab Charter on Human Rights	Regional human rights treaty adopted by the League of Arab States in 2004.
Arab Human Rights Committee	Monitoring body responsible for supervising implementation of the Arab Charter.
Collective Rights	Rights enjoyed by peoples or groups, such as the rights to development and self-determination.
Human Rights Protection	Legal mechanisms established to safeguard fundamental rights and freedoms.
League of Arab States (LAS)	Regional organization of Arab countries promoting political, economic, and cultural cooperation.
Regional Human Rights System	A framework established by regional organizations to protect and promote human rights within a particular geographic area.
State Reporting Mechanism	A procedure requiring States to submit reports on their compliance with human rights obligations.

10.13 Short Answer Questions

1. What is meant by regional protection of human rights?
2. What is the African Charter on Human and Peoples' Rights?
3. State the objectives of the African Charter.
4. Mention four rights guaranteed under the African Charter.
5. Explain the role of the African Commission on Human and Peoples' Rights.

10.14 Terminal Questions

- Q.1. Discuss the regional protection of human rights in Africa with special reference to the African Charter on Human and Peoples' Rights, the African Commission, and the African Court.
- Q.2. Explain the regional protection of human rights in the Arab world with reference to the Arab Charter on Human Rights and the Arab Human Rights Committee.
- Q.3. Compare the African and Arab regional systems for the protection of human rights, highlighting their institutions, enforcement mechanisms, achievements, and challenges.
- Q.4. Critically examine the achievements and limitations of the regional human rights protection systems in Africa and the Arab world.

UNIT 11

CONTRIBUTION OF ICJ PART-I

11.1 INTRODUCTION

11.2 DEVELOPMENT OF HUMAN RIGHTS LAW THROUGH JUDICIAL DECISIONS

11.3 ROLE OF THE ICJ

11.4 RESERVATIONS TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

11.5 HAYA DE LA TORRE CASE (COLUMBIA V. PERU, JUDGMENT OF 13 JUNE 1951)

11.6 WESTERN SAHARA

11.7 LEGALITY OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY

11.8 SELF-ASSESSMENT QUESTIONS:

11.9 FURTHER READINGS

11.1 INTRODUCTION

Article 38(1)(d) of the Statute of the International Court of Justice also establishes 'judicial decisions' as one of the sources of law. At the same time, the said article very clearly refers to judicial decisions as being merely 'a subsidiary means for the determination of rules of law.' The reason for the foregoing has already been discussed earlier: a rule stated in a judicial decision will not assert itself as a law because the judge stated it, but because the judge considers that it derives from one of the principal sources of law viz. treaties, customs and general principles of law. From the foregoing it could be concluded that judges do not make law, however, at the same time, their contribution to the corpus of law by way of derivation from the major sources of law cannot be questioned either. Nevertheless, this Judge made law is considered a subsidiary source of law.

Having said that, States involved in the dispute, or their counsel, often cite judicial precedents and judges' opinions to support their cause. At the same time, arbitrators and individual judges of the ICJ also do not hesitate to refer to its own judicial opinions. However, the Court itself usually avoids referring its own judicial pronouncements as a solid foundation for its own decision and reasons out each case on its own.

11.2 DEVELOPMENT OF HUMAN RIGHTS LAW THROUGH JUDICIAL DECISIONS

From the phraseology used in Article 38(1)(d), it is clear that judicial decisions are not confined to international decisions only. Decisions of national courts may also be looked at as a subsidiary source of law. In this module, we will first look at the jurisprudence of the International Court of Justice. In later modules, however, we will look at judicial decisions from the International Criminal Court and individual nations that have helped in the evolution of international human rights law.

11.3 ROLE OF THE ICJ

Before analysing the role of ICJ in contributing the international human rights regime, it must be borne in mind the inherent limitations the ICJ faces in making a significant contribution to international human rights law. According to Article 34 of the Statute of the ICJ, “only states may be parties in cases before the Court.” Given that only states may institute a proceeding in the ICJ, it represents an obvious obstacle for the Court towards contributing and developing international human rights regime as by their very nature such rights are concerned with the individual.

In addition, since the majority of the human rights treaties have their own dispute settlement mechanism, the situations in which the Court has a deal with human rights issues have arisen mainly in the context of general international law and non-human rights specific treaties or provisions, which nevertheless have raised such issues. The cases decided by the ICJ, whether through its contentious jurisdiction or through advisory jurisdiction, are based on various themes of human rights, namely right of self-determination, genocide, right to asylum, diplomatic protection, consular relations and treatment of the human rights rapporteurs. The discussion on these cases is spread over three modules. Let us look at some of these cases which have shaped the international human rights regime as it exists today:

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion of 28 May 1951)

The General Assembly was concerned with the fact that some States had made certain reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, which was objected to by other States. Accordingly, the General Assembly asked the ICJ for an advisory opinion on the legal effects of reservations to the Genocide Convention. The said request contained four questions, primarily dealing with the effect on the membership of a State that put in a reservation to some provisions of the Genocide Convention at the time of expressing consent to be bound by it.

Before we move on to the observations made by the ICJ in this matter, it is important to note that the ICJ being wary of the interpretations that could be given to its decisions, itself limited the application of its findings in this opinion by stating, “The questions thus having a clearly defined object, the replies which the Court is called upon to give them are necessarily and strictly limited to that Convention.” Therefore, even though the ICJ exclusively limited its observations to the Genocide Convention, the impact of these over the regime of international human rights regime has been phenomenal.

First, the Court observed that “The object and purpose of the Convention imply that it was the intention of the General Assembly and of the States which adopted it that as many States as possible should participate... The object and purpose of the convention thus limit both the freedom of making reservations and that of objecting to them.¹” Now, by focussing on the very object and purpose of the Convention, the ICJ paid attention to the very *raison d’être* of a human rights treaty, namely that of protecting the human rights of individuals or groups of individuals vis-à-vis the State. Moreover, this implies that the preamble of all treaties could possibly be looked at to derive a universal recognition of an international norm.

Second, the Court went on to observe that, “The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as a crime under international law involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations. The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation... The Genocide Convention was therefore intended by the General Assembly and by the contracting parties to be definitely universal in scope.”

The Court thus introduces new concepts to protect the international human rights regime viz. “shocks the conscience of mankind,” “results in great losses to humanity,” “contrary to moral law,” “contrary to the spirit and aims of the United Nations,” among others. The Court then goes on to assess the consequence of these conceptions and concludes that the principles underlying the Genocide Convention are principles which are recognized by civilised nations as binding on States, even without any conventional obligation. In a way, the ICJ pointed out that if any reservation is made by a State which is contrary to the customary nature of the principles enshrined in the Convention, then such a reservation would be held to be null and void. In effect, the Court widened the possible effect of a Convention concerned with the protection of mankind.

11.4 ASYLUM CASE (COLUMBIA V. PERU, JUDGMENT OF 20 NOVEMBER 1950)

Criminal proceedings were initiated on charges of military rebellion against Mr de la Torre, the leader of the American People’s Revolutionary Alliance party, for the instigation and direction of that failed rebellion in Peru. On January 3, 1949 while being sought by the Peruvian authorities, diplomatic asylum was granted to Mr de la Torre by the Colombian ambassador in Lima who requested for a safe custody for Mr de la Torre to leave the country but was rejected by the Peruvian authorities who had charged Mr de la Torre for committing common crimes and therefore not entitled to the benefits of asylum. On being unsuccessful in deciding the matter, both the Peruvian and the Colombian government decided to take the matter to ICJ.

The court while deciding the question of ‘granting asylum’ first attempted to explain the term in following words:

The grant of asylum is not an instantaneous act which terminates with the admission, at a given moment, of a refugee to an embassy or legation. Any grant of asylum results in, and in consequence logically implies, a state of protection; the asylum is granted as long as the

continued presence of the refugee in the embassy prolongs this protection. This view, which results from the very nature of the institution of asylum, is further confirmed by the attitude of the Parties during this case.

With respect to Peru's claim that that the diplomatic asylum had been granted to Mr de la Torre in violation of the Havana Convention because he was accused not of political offence but of a common crime, the Court held that Peru failed to establish that military rebellion in itself constituted a common crime which could have possibly made Mr de la Torre an accused. On Peru's second claim that urgency required to justify asylum under the Havana Convention was absent in the given situation, the Court ruled that the substantial justification behind granting asylum is the imminence or persistence of a danger to the person of the refugee. In analyzing what could be a dangerous situation as given under the Havana Convention that can justify the asylum, the court held that:

In principle, it is inconceivable that the Havana Convention could have intended term 'urgent cases' to include the danger of regular prosecution to which the citizens of any country lay themselves open by attacking the institutions of that country; nor can it be admitted that in referring to 'the period of time strictly indispensable for the person who has sought asylum to ensure in some other way his safety', the Convention envisaged protection from the operation of regular legal proceedings.

In principle, therefore, asylum cannot be opposed to the operation of justice. An exception to this rule can occur only if, in the guise of justice, the arbitrary action is substituted for the rule of law. Such would be the case if the administration of justice were corrupted by measures clearly prompted by political aims.

Protection here cannot be constructed as protection against the regular application of the law. Therefore, Havana Convention cannot be said to justify granting of asylum to any person prosecuted for political offenses, either in the course of revolutionary events or in the more or less troubled times that follow, for the sole reason that it must be assumed that such events interfere with the administration of justice.

Therefore, grant of asylum by the Colombian ambassador in Lima to Mr de la Torre was incorrect and not justified as 'urgency' according to the provisions of the Havana Convention.

11.5 HAYA DE LA TORRE CASE (COLUMBIA V. PERU, JUDGMENT OF 13 JUNE 1951)

When the judgment in the above-mentioned case, Asylum Case (Columbia v. Peru) was granted by the ICJ on November 20, 1950, the dispute arose between Columbia and Peru with respect to its execution. The dispute arose, as Peru demanded Columbia to surrender Mr de la Torre according to the ICJ decision, but the latter refused stating that such surrender would be contrary to the provisions of the Havana Convention and decision of ICJ given on November 20, 1950. So now that matter was again before ICJ to interpret its judgment of November 20, 1950. The parties questioned the court on the manner in which asylum could be terminated.

The court stated that such question does not require judicial consideration; rather it requires the parties to make a choice amongst various options depending upon grounds of practicability or political expediency. There was no provision in the Havana Convention

providing the manner in which an asylum could be terminated for cases in which the asylum had not been regularly granted and where the territorial State had not requested the departure of the refugee. This silence in the Convention was held to convey that such matters should be decided by the parties themselves according to their convenience and political exigency.

In the given situation the court held that Mr la de Torre was a political offender, and the asylum had to end, but that the Government of Colombia was under no obligation to bring this about by surrendering the refugee to the Peruvian authorities as surrender was not the only manner to terminate the asylum. The court will not divert from its judicial function and suggest any mode termination. The parties have to solve this dispute peacefully through negotiations.

11.6 WESTERN SAHARA (ADVISORY OPINION OF 16 OCTOBER 1975)

General Assembly vide its resolution 3292 requested the ICJ to give an advisory opinion on the issue of Western Sahara. The advisory opinion was sought by the General Assembly to plan out its steps towards supporting decolonization of Western Sahara from conflicting claims by the Kingdom of Morocco and Mauritania. The two questions raised by GA for consideration by ICJ are:

- i. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one (terra nullius)?

If the answer to the first question is in negative, then the second question was:

- ii. What were the legal ties of this territory with the Kingdom of Morocco and the Mauritanian entity?

In giving its legal opinion, the Court considered the Decolonization Declaration of 1960 which contemplated three possibilities for the decolonization process of non-self-governing territories, namely (a) emergence as a sovereign independent State; (b) free association with an independent State; or (c) integration with an independent State.

In court's opinion, the two questions proposed by the General Assembly were based on the premise of 'self-determination.'

The court answered the first question in negative. It reached this conclusion on applying the principle of terra nullius to the current fact situation. It stated that terra nullius means:

The expression 'terra nullius' was a legal term of art employed in connection with 'occupation' as one of the accepted legal methods of acquiring sovereignty over the territory. 'Occupation' being legally an original means of peaceably acquiring sovereignty over territory otherwise than by cession or succession, it was a cardinal condition of a valid 'occupation' that the territory should be terra nullius – a territory belonging to no-one – at the time of the act alleged to constitute the occupation.

In this case, before Spain colonized Western Sahara, it was occupied by people who were socially and politically organized in tribes and were represented by heads. Therefore, when Spain proceeded with the colonization, it was not over a terra nullius.

In answering the second question, the Court looked into the meaning of the term 'legal ties.' The court held that since the term is not defined anywhere, it has to be understood in relation to the people as opposed to the territory and as referring to such 'legal ties' as may affect the

policy to be followed in the decolonization of Western Sahara. At the time of colonization by Spain, it was found that there were some legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara and also there were some legal ties, relating to rights to the land, between Mauritanian and the territory of Western Sahara. But these legal ties were not of a nature that could now affect the application of the Decolonization Declaration of 1960 through the free and genuine expression of the will of the people of the Territory. As per the Declaration, subjecting people to alien subjugation, domination and exploitation constituted a denial of fundamental human rights and was against the UN Charter's objective of promoting peace and cooperation.

11.7 LEGALITY OF THE CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY (ADVISORY OPINION OF 9 JULY 2004)

The question raised before the ICJ by the General Assembly for its advisory jurisdiction was:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”

The court here emphasized on the right of the Palestinian people to self-determination. ICJ explained that right to self-determination has been enshrined in the UN Charter, Article 1 of the International Covenant on Economic, Social and Cultural Rights and Article 1 of the International Covenant on Civil and Political Rights and in the General Assembly resolution 2625. This right puts an obligation on the States to promote the realization of that right and to respect it, and the duty to refrain from any forcible action which deprives peoples of their right to self-determination. The court emphasized that right to self-determination is now *erga omnes*. ICJ stated that the existence of the right of self-determination of Palestinian people is no longer in dispute as its existence has been recognized in a correspondence between the Israeli Prime Minister and President of the Palestine Liberation Organization whereby the former recognized the latter as the representative of the people of Palestine and the latter acknowledged the right of Israel to exist in peace and security. Reference has been made to the rights of the Palestinian people in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995 and General Assembly resolutions.

Analysing the route of construction of the wall, the Court found that it covers 80 per cent of the settlers living in the Occupied Palestinian Territory and includes within that area the great majority of the Israeli settlements in the occupied Palestinian Territory (including East Jerusalem). The court found that the construction, along with severely impeded the exercise by the Palestinian people of their right to self-determination, and was, therefore, a breach of Israel's obligation to respect that right. Israel's violations include certain obligations *erga omnes* which by their nature are concerns of all the States. The Court emphasized the duty of every State to promote, through joint and separate action, the realization of the principle of equal rights and self-determination of people.

11.8 SELF-ASSESSMENT QUESTIONS

1. How does the ICJ differ from other international courts out there?
2. Are decisions of ICJ binding?
3. What is an Advisory Opinion of the ICJ?

11.9 SUGGESTED READINGS

1. Politics and the Emergence of an Activist International Court of Justice By Thomas J. Bodie
2. The International Court of Justice at 60: Performance and Prospects
3. By Taft, William Howard, IV; Gowlland-Debbas, Vera; Bethlehem, Daniel; Simma, Bruno
4. Schnetter, M., "Remedies at the International Court of Justice" (June 30, 2017), Bucerius Law Journal, 2017, No. 1.

UNIT 12

CONTRIBUTION OF ICJ PART-II

12.1 INTRODUCTION

12.2 CORFU CHANNEL CASE (THE UNITED KINGDOM V. ALBANIA, JUDGMENT OF 9 APRIL 1949, MERITS)¹

12.3 THE CASE CONCERNING THE BARCELONA TRACTION, LIGHT AND POWER COMPANY, LIMITED

12.4 LAGRAND (GERMANY V. UNITED STATES, ORDER ON PROVISIONAL MEASURES OF 3 MARCH 1999 AND JUDGMENT OF 27 JUNE 2001)

12.5 AVENA AND OTHER MEXICAN NATIONALS (MEXICO V. UNITED STATES, ORDER ON PROVISIONAL MEASURES OF 5 FEBRUARY 2003 AND JUDGMENT OF 31 MARCH 2004)

12.6 SELF-ASSESSMENT QUESTIONS:

12.7 FURTHER READINGS TERRITORY

12.1 INTRODUCTION

In this module, we will first discuss the Corfu Channel Case and the Case concerning the Barcelona Traction, Light and Power Company, Limited (famously called the Barcelona Traction case) which are based on the contributions of the ICJ in the development of the fundamental principles of international human rights law. The two fundamental concepts that developed through these cases are 'elementary considerations of humanity' and 'obligations erga omnes.'

12.2 CORFU CHANNEL CASE (THE UNITED KINGDOM V. ALBANIA, JUDGMENT OF 9 APRIL 1949, MERITS)¹

This case arose out of an incident that occurred in the Albanian territorial waters of the Corfu Channel where two British warships were struck by mines and incurred heavy damage and loss to human life.

In the relevant passage from this judgment, the ICJ stated,

The obligations incumbent upon the Albanian authorities consisted of notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations... are based on certain general and well-recognized principles, namely, elementary considerations of humanity, even more exacting in peace than in war.

The use of the phrase ‘elementary considerations of humanity’ possibly indicates to the tenets of natural law, whereby the ICJ insists that these rules need not be written down anywhere and that they are self-evident. It is also to be noted here that in the ICJ has never attempted to identify the contents or underlying norms of this phrase. This concept in the Court’s opinion seems to be grounded on moral ethics rather than a legal principle and places upon States an obligation to behave in a manner which takes into account basic human rights of people across the board.

The Court after coining this term in fact utilized this principle in several of its decisions later on. In the Advisory Opinion on the Legality of Threat or Use of Nuclear Weapons, the Court held, “It is undoubtedly because a great many rules of humanitarian law applicable in armed conflict are so fundamental to the respect of the human person and elementary considerations of humanity as the Court put in its Judgement of 9 April 1949 in the Corfu Channel case... these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them because they constitute intransgressible principles of international customary law.” In the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory case, the ICJ recalled the elementary considerations of humanity and held that “these rules incorporate obligations which are essentially of an *erga omnes* character.” Thereafter, in the Case concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), the Court held that the rules of ‘elementary considerations of humanity’ consist of elaborate rules which are also to apply to international conflicts.

12.3 THE CASE CONCERNING THE BARCELONA TRACTION, LIGHT AND POWER COMPANY, LIMITED (BELGIUM V. SPAIN, 1958-1961 AND 1962-1970, JUDGMENT OF 5 FEBRUARY 1970 (MERITS))

Barcelona Traction, Light and Power Company, Limited (the “Company” from here on) was a corporation incorporated in Canada that had set up a power production and distribution system in Spain. The majority of its shares were owned by Belgian nationals. Sometime prior to the Spanish Civil War in 1936, the Company had issued bonds to non-Spanish investors. However, during the Spanish Civil War, the Spanish government refused to allow the Company to transfer currency to pay its bondholders the interest they were due. The bondholders sued the Company for default, and this led to the selling off of the business of the Company. To protect the interest of the shareholders of the Company, Belgium sued Spain.

While noting that when a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded them, the Court observed,

“In particular, an essential distinction should be drawn between obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the sphere of diplomatic protection. By their very nature [the obligations of a State towards the international community as a whole] are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*². Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body

of general international law...; others are conferred by international instruments of a universal or quasi-universal character.”

This observation by the ICJ is of supreme importance, for it found that erga omnes obligations of States towards the international community as a whole derives from the principles and rules concerning the basic rights of the human person. Moreover, it also observed that such erga omnes obligations are a concern of all States, essentially implying that any State has the right to complain of a breach. Thus, a State could be called to account for other States if acts of aggression, genocide, or other grave and widespread infringements upon basic rights of the human person were occurring or stemming from a State’s territory. It is also to be noted that even though the list of erga omnes obligations listed out by the ICJ is by no means an exhaustive one, however, three out of these four points listed by the Court deal with human rights law viz. genocide, protection from slavery and racial discrimination. This shows the recognition by the ICJ to increased importance of human rights in the international arena and how erga omnes obligations will possibly be utilized to further expand the scope human rights protection.

Now we shall first discuss a case which led to the internationalization of the protection of individual human rights. In the beginning, any international effort to protect the human rights of an individual was considered to be an interference with the domestic affairs of the state. However, with the changing time, a need was felt to extend internationalize the protection of an individual’s rights in certain situations. It became more important when human rights became an international concern from being a national issue and protection of international peace and order was an obligation that required interdependence of the States. In its advisory opinion in the Interpretation of Peace Treaties, ICJ stated that human rights were not solely a domestic affair shielded from the eyes and the interest of the outside world.

Interpretation of Peace Treaties with Bulgaria, Hungary and Romania Advisory Opinion of 30 March 1950 (First Phase)³

The questions concerning the Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania were referred to the International Court of Justice for an advisory opinion by a resolution of the General Assembly. The General Assembly did so after the Allied, and Associated Powers accused Bulgaria, Hungary and Romania (the “three States” from here on) of violating the Peace Treaties and in particular, those articles of the Treaties which have to do with the security of human rights and fundamental freedoms. In fact, the three States were also accused of non-cooperation on behalf of the Allied and Associated Powers in appointing commissions to resolve disputes peacefully as per the Peace Treaties.

There were four questions put before the Court by means of this resolution. The first question in the said resolution was, “Do the diplomatic exchanges between the three States and certain Allied and Associated Powers disclose disputes subject to the provisions for the settlement of disputes contained in the Treaties?”

Now, the first argument of the three States was that in dealing with the question of the observance of human rights and fundamental freedoms in these three States, the General Assembly was ‘interfering’ or ‘intervening’ in matters essentially within the domestic jurisdiction of States. The alleged non-competence of the GA to request such an opinion was deduced from Article 2, paragraph 7 of the UN Charter, which essentially barred the United Nations for intervening in matters of domestic jurisdiction of any state⁴.

The Court noted that the General Assembly justified the adoption of its resolution by stating that ‘the UN, pursuant to Article 55 of the Charter, shall promote universal respect for and observance of human rights and fundamental freedoms, for all without distinction as to race, sex, language or religion’. The Court also noted that the request was directed solely at obtaining certain clarifications of a legal nature concerning the interpretation of the terms of a treaty and thus, must not to be considered as a question essentially within the domestic jurisdiction of a State. Here, although the Court clarified that the object of the request was limited to legal clarifications, it implicitly departed from the view that the question of the observance of human rights is a domestic issue.

This implicit shift in the 1950s was truly remarkable, and at the very least, the proceedings before the ICJ further increased awareness about the human rights violations that were taking place in the States concerned, thereby giving an international dimension to this issue. Moreover, even though the issue led to a dead-end in view of the stubborn attitude of the governments of the three States, the Court pointed to the international responsibility incurred by these governments because of their refusal to appoint their Commission members.

Now we will discuss three judgments of the ICJ on consular relations disputes. This topic is an important part of the international human rights law as it concerns the actions of the State to extend protection to their citizens beyond their territorial jurisdictions, i.e., in situations where allegedly the citizens of one State have committed a crime under the national laws of another State and he is being tried without extending adequate protection under the law. All three cases mentioned below have been filed against the United States of America by Paraguay, Germany, and Mexico, respectively on the basis of the Optional Protocol to the Vienna Convention on Consular Relations of 24 April 1963 (Consular Relations Convention or Convention). These cases were brought before the ICJ by States exercising their right to diplomatic protection under the Vienna Convention on Diplomatic Relations of 18 April 1961 and/or the Vienna Convention on Consular Relations of 24 April 1963.

Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States, Application of 3 April 1998 and Order of 9 April 1998)

This case was brought before ICJ by Paraguay against the United States concerning alleged violations of the Consular Relations Convention of 1963 with respect to the case of Mr. Angel Francisco Breard, a Paraguayan national convicted of murder in Virginia, US. The authorities in Virginia had arrested Mr. Breard, who was consequently charged, tried and convicted of culpable homicide and finally sentenced to death by a court in Virginia in 1993 and executed. Paraguay alleged that this execution took place in violation of Article 5 and 36 of the Consular Relations Convention, 1963. Article 36 that states:

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
 - a. Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
 - b. If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody

- or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
- c. Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.
 2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

In this case, it was alleged by Paraguay that authorities in Virginia did not inform them of Mr. Breard's arrest and didn't allow him to invoke the provisions of the Convention. Mr. Breard was not informed of his rights, and the proceedings were conducted for him without translation. Paraguay government approached the US Supreme Court, US government and the Department of State against the verdict of execution but its efforts went into vain. It finally raised the matter before ICJ on April 3, 1998 as the execution was due on April 14, 1998.

In its request for provisional measures in the situation, Paraguay emphasized on the inherent right to life of every individual provided for in Article 6 of the International Covenant on Civil and Political Rights and requested the Court to order the US to not execute Mr. Breard until the Court gives its decision.

Taking into consideration the urgency in the matter, the court ordered that US should not execute Mr. Breard pending the final decision in the matter of ICJ. However, the Court clarified that its decision will only concern the resolution of international dispute between the States, Paraguay, and US, and not comment on the existence of death penalty in the US for heinous crimes.

Despite the binding nature of the orders of the ICJ, unfortunately, this Order couldn't prevent the execution of Mr. Breard who was executed on 14 April 1998. At that point, an out of Court settlement had been reached between the government of Paraguay and the US government.

12.4 LAGRAND (GERMANY V. UNITED STATES, ORDER ON PROVISIONAL MEASURES OF 3 MARCH 1999 AND JUDGMENT OF 27 JUNE 2001)

Two German nationals in the State of Arizona were tried and sentenced to death without being advised of their rights to consular assistance as guaranteed to them by Article 36 (1)(b) of the Vienna Convention on Consular Relations. This provision of the said Convention provides that when a national of a foreign country is arrested or detained on criminal or immigration charges, the detainee must be advised of the right to have the detainee's consulate notified and that the detainee has the right to regular consultation with consular officials during detention and any trial. This failure on the part of the United State precluded Germany from protecting its nationals' interests. Accordingly, Germany brought this matter before the ICJ. It

is interesting to note that Germany brought this matter to the ICJ on March 02, 1999, just one day prior to the execution.

Given the urgency in the matter, Germany requested the ICJ to take recourse to 'provisional measures' under Article 41 of the Statute of the ICJ, read with Articles 73-75 of the Rules of the Court and issue orders halting the execution of the convict so that a final decision on merits could be taken. The Court agreed with Germany and issued an order within hours that ordered the United States to halt the execution of Walter LeGrand. However, Walter LeGrand was executed, nonetheless.

Now, two important contributions were made to the international human rights corpus by this judgment. First, the court held that Article 36, paragraph 1 of the Vienna Convention on Consular Relations creates individual rights, which may be invoked by the national State of the detained person.

This observation is important as the said convention is essentially an inter-State agreement and was not clear if the consular access provisions would *prima facie* apply to individuals.

Secondly, the Court held, that by failing to take all measures at its disposal to ensure that Walter LeGrand was not executed pending the final decision of the ICJ, the United States breached the obligation incumbent upon it under the Order indicating provisional measures issued by the Court on 3 March 1999. This in fact is a bold measure taken by the ICJ clarifying that such orders are binding upon States, especially in light of the various questions being raised for the efficacy of any international court.

12.5 AVENA AND OTHER MEXICAN NATIONALS (MEXICO V. UNITED STATES, ORDER ON PROVISIONAL MEASURES OF 5 FEBRUARY 2003 AND JUDGMENT OF 31 MARCH 2004)

Like the previous cases, this case was filed against the United States by Mexico on violation of Consular Relations Convention in relation to the treatment of a number of Mexican nationals who had been tried, convicted and sentenced to death in criminal proceedings in different states of the US between 1979 and the time when the Application was filed. When Mexico brought this case in the ICJ, a few of its nationals were a week away from the execution of their death sentence. With the provisional orders from the Court, US did not execute the sentence until the matter was decided by the Court on merits.

The US raised certain preliminary objections to the jurisdiction of the court and admissibility of the case, which was rejected by the court. With respect to the rights of the affected Mexican citizens, the court held that the US had violated Article 36 paragraph 1 (c), of the Convention by depriving Mexico of the right to arrange for legal representation in a timely fashion. It has violated Article 36, paragraph 2 by refusing to re-consider the execution of three Mexicans after the establishment of the violations in the legal process as under Article 36(1) (b). While considering the appropriate reparation, in this case, the Court found that it consisted of the obligation of the US to provide, by means of its own choosing, a review and reconsideration of the convictions and sentences of the Mexican nationals and abiding by Article 36 of the Convention.

12.6 SELF-ASSESSMENT QUESTIONS:

1. What is the take away from the Corfu Channel case?
2. Do you think Advisory Opinions play a vital part in the problem solving process at ICJ?
3. Why do you think the US was an active participant in ICJ matters in its early years?

12.7 SUGGESTED READINGS

- Nesheva, R., "100 Years of International Justice: Time to Consider a Reform of the International Court of Justice" (June 3, 2015), IALS Student Law Review, 2 (2015), No. 2, pp.12-25.
- Maksymov, M., "Is the International Court of Justice an Option for Ukraine in Light of the Conflict with Russia?" (October 1, 2015), Current Affairs, Cambridge Journal of International and Comparative Law.
- Madsen, M.R., "The New Sociology of International Courts" (December 15, 2015), ESIL Reflections, 4, No. 10.

UNIT 13

CONTRIBUTION OF ICJ PART-III

13.1 INTRODUCTION

13.2 NOTTEBOHM CASE (LIECHTENSTEIN V. GUATEMALA, JUDGMENT OF 6 APRIL 1955, SECOND PHASE)

13.3 UNITED STATES DIPLOMATIC AND CONSULAR STAFF IN TEHRAN (UNITED STATES V. IRAN, ORDER OF 15 DECEMBER 1979)

13.4 13.4 AHMADOU SADIO DIALLO CASE (REPUBLIC OF GUINEA V. DEMOCRATIC REPUBLIC OF THE CONGO)

13.5 DIFFERENCE RELATING TO IMMUNITY FROM LEGAL PROCESS OF A SPECIAL RAPPORTEUR OF THE COMMISSION ON HUMAN RIGHTS.

13.6 CONCLUSION

13.7 SELF-ASSESSMENT QUESTIONS TERRITORY

13.1 INTRODUCTION

The Nottebohm case discussed below deals with diplomatic protection. It is still a controversial issue if the area of diplomatic protection is covered under international human rights law. Matters of diplomatic protection are based on the principle of comity on one hand and protection of the rights of an individual by its State on the other. A State can only exercise the right of diplomatic protection over an individual if there exists real and effective tie between the two.

13.2 NOTTEBOHM CASE (LIECHTENSTEIN V. GUATEMALA, JUDGMENT OF 6 APRIL 1955, SECOND PHASE)

This case deals with the right of an individual to have a nationality. It is provided for under Article 15 of the Universal Declaration of Human Rights as:

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The right to nationality is an important right as from the nationality accrues significant human rights - civil, political, social and economic. Nationality is closely connected to the concept of State – which has the obligation of securing rights for its nationals and necessary conditions for their enjoyment. Nottebohm case, discussed below, is relevant as it discusses the central role played by naturalization, as a process of acquiring a nationality, and the concept of effective nationality as determining factors for established citizenship, a prerequisite for a State's ability to exert diplomatic protection on behalf of an individual.

The Nottebohm case was filed in ICJ by Liechtenstein against Guatemala claiming reparation for arresting, detaining, expelling and refusing to readmit Mr. Friedrich Nottebohm (Mr. Nottebohm), a citizen of Liechtenstein, and seizing and retaining his property without compensation. The request for reparation had two parts: a claim for special and general damages owed to the Government of Liechtenstein and, the restitution by Guatemala to Mr. Nottebohm of all his property seized and retained with damages for the deterioration of that property.

Liechtenstein contended that it naturalized Mr. Nottebohm according to its national laws on October 20, 1939, and Mr. Nottebohm has exhausted all the remedies available under the Guatemala's municipal laws. Guatemala, on the other hand, contended that Liechtenstein's claims should be dismissed due to the absence of any prior diplomatic relations and fraudulent obtainment of nationality by naturalization by Mr. Nottebohm.

The court first considered whether the nationality conferred on Mr. Nottebohm by Liechtenstein by means of naturalization could be validly invoked against Guatemala. Commenting on the importance of nationality, ICJ stated that –

Nationality has its most immediate, it's most far-reaching and, for most people, its only effects within the legal system of the State conferring it. Nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals. This is implied in the wider concept that nationality is within the domestic jurisdiction of the State.

The court held that while granting nationality is a state act, governed by national laws, the question whether a State was entitled to exercise protection and whether third States were required to recognize the granting of nationality is a question under International law. In cases where two states have conferred nationality on the same person, arbitrators in international arbitrations and courts of various countries have given effect to the nationality that is based on stronger factual ties. The Court provided a list of factors that may be utilized in a situation to see whether the nationality is real and effective:

- i. the habitual residence of the individual concerned;
- ii. the centre of his interests;
- iii. his family ties;
- iv. his participation in public life;
- v. attachment shown by him for a given country and inculcated in his children, and so on

Based on the legal bond between the State and the individual, the State will only exercise protective measures for the individual if there exists a genuine connection of existence, interests, and sentiments, together with the existence of reciprocal rights and duties. While looking into the process by which Mr. Nottebohm acquired nationality, the court questioned

whether at the time of his naturalization Nottebohm appeared to have been more closely linked to his tradition, his establishment, his interests, his activities, his family ties, or his intentions for the near future, to Liechtenstein than to any other State.

The Court took note of the following facts to conclude that Mr. Nottebohm's nationality of Liechtenstein lacked any real existence: Mr. Nottebohm was a German national from the time of his birth. He always retained his family and business connections with Germany, and there was nothing to indicate that his application for naturalization in Liechtenstein was motivated by any desire to dissociate himself from the Government of his country. Further, he had been settled for 34 years in Guatemala, which was the centre of his interests and his business activities, until his removal as a result of war measures in 1943. For Liechtenstein, his actual connections with were extremely insubstantial as there was no settled abode and no prolonged residence in that country at the time of his application for naturalization.

These facts clearly establish the lack of genuineness in obtaining nationality of Liechtenstein and clearly establish fraudulent intentions of escaping the belligerent state. Therefore, Guatemala had no obligation to recognize a nationality granted in such circumstances and Liechtenstein was not entitled to extend its protection to Nottebohm vis-à-vis Guatemala.

13.3 UNITED STATES DIPLOMATIC AND CONSULAR STAFF IN TEHRAN (UNITED STATES V. IRAN, ORDER OF 15 DECEMBER 1979)

This case was a result of a diplomatic crisis between Iran and the United States, whereby the US agreed to shelter the Shah of Iran. In retaliation, a group of Iranian students (some call them revolutionaries) attacked the US Embassy in Iran and took fifty-two American diplomats and citizens hostage for 444 days. It was alleged by the United States that no attempt was made by the Government of Iran to rescue the persons being held hostage, or to persuade the invaders and demonstrators to terminate their action. In fact, the United States alleged direct support of the Iranian government to the group.

While the Court primarily ruled on the inviolability of diplomatic envoys, it also took note of the deteriorating situation that the consular staff could possibly be in and stated, "Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights."

The significance of this judgment is the recognition by the ICJ that binding State obligations do accrue from the Charter of the United Nations and the Universal Declaration of Human Rights. In fact, when the Court did have an option to rule specifically on the points raised by the United States in its application, it's going out of the way to take note of the individual conditions of the hostages is notable.

13.4 AHMADOU SADIO DIALLO CASE (REPUBLIC OF GUINEA V. DEMOCRATIC REPUBLIC OF THE CONGO)

The Government of the Republic of Guinea ("Guinea" from here on) initiated proceedings against the Democratic Republic of Congo ("DRC" from here on) alleging that one of its nationals Mr. Ahmadou Sadio Diallo, was unjustly imprisoned by the authorities of

DRC after being resident in that State for thirty two years. It was also alleged that Mr. Ahmadou was despoiled of his sizable investments, businesses, movable and immovable property, bank accounts and ultimately expelled. Guinea stated that this expulsion came at a time when Mr. Ahmadou was pursuing recovery of substantial debts owed to his businesses by the State and by oil companies in which the State is a shareholder.

Now, this case is remarkable from a human rights perspective. Why? Well, Guinea invoked provisions of the International Covenant on Civil and Political Rights, 1966 (“ICCPR” from here on), the Universal Declaration of Human Rights, 1948 (“UDHR” from here on), Declaration of the Rights of Man and Citizen, 1789 (“Declaration” from here on) among others and the responsibility of the ICJ was, in fact, to rule on such alleged violations only.

Some of the allegations invoked by Guinea were: From the ICCPR, Article 9 para 1 (arbitrary arrest and detention), Article 9 para 2 (informing reasons of arrest and charges), Article 10 (persons deprived of their liberty to be treated with humanity) and Article 13 (procedure for expulsion of an alien) were invoked; Detaining Mr. Ahmadou without trial or any form of charge was violative of the UDHR. From the Declaration of the Rights of Man and Citizen, 1789, Article 2 (Right to property) was invoked. DRC was in breach of peremptory norms of international human rights law.

Based on the facts of the case, the ICJ held that DRC was in violation of Article 9 para 1, para 2 and Article 13 of the ICCPR among other provisions and granted compensation in the matter, as well. This shows that human rights claims, whether civil, political, economic, cultural or social, they all fall in principle under the scrutiny of the ICJ.

In the next two advisory opinions, the ICJ has discussed the status and treatment of the human right rapporteurs under the Convention on the Privileges and Immunities of the United Nations of 1946. It is important to discuss the protections extended to the human rights rapporteurs as they play a predominant role at the grass-root level in implementing the objectives of the UN like maintaining international peace and security, promoting respect for human rights and fundamental freedoms, and acting as a centre for harmonizing the actions of nations. Without extending proper protection to the life, work and mission of these rapporteurs, achieving these ends would not be feasible.

Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations (Advisory Opinion of 15 December 1989)

The United Nations Economic and Social Council submitted a request to the ICJ seeking advisory opinion on “Status of Special Rapporteurs” when an issue arose between the UN and the government of Romania on the status of a UN Special Rapporteur Mr. Dumitru Mazilu who was stationed in Romania in Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a report on the role of youth in the field of human rights. The Commission on Human Rights which had formed the Sub-Commission requested the Secretary-General to extend all assistance to Mr. Mazilu for the completion of the report.

Mr. Mazilu was a member of the Sub-Commission from March 13, 1984, to August 29, 1985; then he was both a member and a rapporteur of the Sub-Commission from August 29, 1985, to December 31, 1987; and finally after no longer being a member of the Sub-Commission he had remained a special rapporteur.

The issue arose before the ICJ over the applicability of the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations. Section 22 provides for the immunities available to the experts on missions for the United Nations. Before looking into the application of this Section in the given situation, the Court interpreted the words ‘experts on mission’ which is undefined in the Convention. The court said the ‘experts on mission’ covers only experts performing missions for the Organization and not officers of the organization chosen for their technical expertise in a particular field. The Section, however, did not provide any indication of the nature, duration or place of these missions. Therefore, Section 22 is meant to extend protection to those who are not officials of the UN but granted certain privileges and immunities to perform the tasks assigned under a mission. Looking at the status of the rapporteurs of the Sub-Commission the Court held that they will be considered as experts on missions under Section 22 as their status was neither that of a representative of a Member State nor that of a UN official, and since they performed independently for the Sub- Commission functions contemplated in its remit. Therefore, the rapporteurs will enjoy the privileges and immunities necessary for the exercise of their functions, and in particular for the establishment of any contacts which could be useful for the preparation, the drafting and the presentation of their reports to the Sub-Commission.

The Court held that during all the time, Mr. Mazilu was the expert on the mission covered under Section 22 and therefore entitled to all immunities and privileges. Facts like that Mr. Mazilu fell seriously ill in May 1987 and his intellectual capacity was questioned by Romania, does not affect his status of an expert on the mission under Section 22.

13.5 DIFFERENCE RELATING TO IMMUNITY FROM LEGAL PROCESS OF A SPECIAL RAPPOREUR OF THE COMMISSION ON HUMAN RIGHTS (ADVISORY OPINION OF 29 APRIL 1999)

The United Nations Economic and Social Council filed a request for an advisory opinion before the ICJ on August 5, 1998, questioning the applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations specifically immunity of the Special Rapporteur from the legal process.

In this case, Dato’ Param Cumaraswamy as Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers gave an interview in his capacity as UN Special Rapporteur. The defamatory suit was then filed against him by two Malaysian companies who alleged that the said article contained defamatory words that had ‘brought them into public scandal, odium and contempt.’ The UN counsel requested the Malaysian authorities to exempt Mr. Cumaraswamy from the legal process as he is entitled to such immunity under Section 22 of the Convention, but the request was dismissed by the concerned judge in the case. On failure of an out of court settlement between the ECOSOC and Malaysian government, the request was made before the ICJ.

Relying on the Mazilu case, discussed above, the Court held that since Mr. Cumaraswamy was a special rapporteur at that time, he will be entitled to the immunities and privileges under the Convention. Now the question was, whether the ‘allegedly defamatory’ words spoken by Mr. Cumaraswamy were made during the course of the performance of his mission which will further entitle him to privileges under Section 22? For reaching the conclusion, the Court took into consideration Article VI, Section 23, of the Convention which provides that ‘[P]rivileges and immunities are granted to experts in the interests of the United

Nations and not for the personal benefit of the individuals themselves.’ In the given case, the Secretary-General, or the Legal Counsel of the UN on his behalf, had on numerous occasions informed the Government of Malaysia that Mr. Kumaraswamy had spoken the words quoted in the article in International Commercial Litigation in his capacity as Special Rapporteur of the Commission and that consequently he was entitled to immunity from ‘every kind’ of legal process. Additionally, it was recognized by the UN that nowadays it is a common practice for the rapporteurs to interact with the media and share the details of their work. Therefore, when Mr. Kumaraswamy did this, he was performing his work as the UN Special Rapporteur.

The Secretary-General, being the administrative officer of the organization has the primary responsibility to safeguard the interests of the Organization, the Court held that it would be up to him to assess whether the agents of the Organization act within the scope of their functions, and, if this is so, to protect these agents, including experts on mission, by asserting their immunity and then bring his findings to the knowledge of the national courts. Also, it was the obligation of the Government of Malaysia under Article 105 of the Charter and under the Convention, to inform its courts of the position taken by the Secretary-General which it had failed at. Therefore, Mr. Kumaraswamy as an expert on the mission was entitled to immunity from legal process, and the Government of Malaysia was obligated to communicate this advisory opinion to the competent Malaysian courts, to give effect to Malaysia’s international obligations.

13.6 CONCLUSION

From our discussion in the last three modules, we may see that ICJ, through its contentious and advisory jurisdiction, has dealt with a variety of issues which have contributed in various ways in the development of international human rights law. The Court has been able to progressively develop and interpret norms of the international law of human rights, hence contributing to an international legal order where human rights are given a prominent place. This development has also been possible through the initiatives of the United Nations, in the form of UN Charter and other treaties which have been regularly referred by ICJ in its opinions. The Court has at various places stated that abiding the human rights clauses in the UN Charter is the most important obligation of the States amongst others mentioned in the Charter. Through the judgments discussed, we may conclude that the Court’s contributions are following:

- The principles and rules of international law concerning the fundamental rights of human beings engender obligations erga omnes.
- The right of peoples to self-determination is a right which has an erga omnes character under international law.
- International instruments such as the Vienna Convention on Consular Relations create individual rights for natural persons which are part of international human rights law.

13.7 SELF-ASSESSMENT QUESTIONS

1. In light of these cases, what do you think is the likely fate of the Kulbhushan Yadav's case filed by India against Pakistan?
2. What is a Special Rapporteur? Who can appoint one?
3. Is the ICJ a human rights court? How come then the ICJ entertains matters pertaining to human rights?

Further Readings:

1. The International Court of Justice and Human Rights, Rosalyn Higgins
2. Chan, L., “The Dominance of the International Court of Justice in the Creation of Customary International Law” (September 2016), *Southampton Student Law Review*, 6 (2016), No. 1, pp. 44-71.
3. Venzke, I., “Public Interests in the International Court of Justice: A Comparison between Nuclear Arms Race (2016) and South West Africa (1966)” (June 2, 2017), in 111 *AJIL Unbound* (2017), pp. 68-74.

UNIT- 14

ROLE OF ICC, ICTY, ICT

14.1 INTRODUCTION

14.2 LEARNING OUTCOMES

14.3 THE INTERNATIONAL CRIMINAL COURT

14.4 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

14.5 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

14.6 ICC VERSUS ICTY AND ICTR

14.7 HYBRID COURTS

14.8 SUMMARY

14.9 GLOSSARY

14.10 REFERENCES

14.11 SUGGESTED READING

14.12 SHORT ANSWER QUESTIONS (SAQS)

14.13 TERMINAL QUESTIONS

14.1 INTRODUCTION

The system of maintaining and improving the consistency, simplicity, and efficiency of protecting human values based on international human rights a tremendous role is played by the International Court of Justice (ICJ) which we discussed in the previous module, and other International Courts like the International Criminal Court (ICC) and international criminal tribunals like the International Criminal Tribunal for the former Yugoslavia (ICTY), The International Criminal Tribunal for Rwanda (ICTR) and other International Quasi-Judicial Bodies.

After the World War I the idea of the establishment of a permanent international criminal court had emerged but for various reasons none of the tribunal contemplated at that time could be formed. After the Second World War, two ad hoc international military tribunals: the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East, were established to try individuals who committed war crimes, crimes against

peace and crimes against humanity. A prominent contribution of these tribunals was that they shook the foundation of State Sovereignty as a shield against crimes in international law. The Nuremberg Tribunal observed: 'Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.'

International Law Commission, established by the United Nations, made efforts to codify the legal principles that emerged during the Nuremberg and Tokyo trials, but progress on this initiative was blocked during the Cold War years. With the end of the Cold war towards the later part of the 20th century the ICTY and the ICTR were established with limited criminal jurisdiction to try cases of violations of human rights norms. However, owing to their ad hoc nature the quest for a permanent international criminal court continued. This ultimately led to the adoption of the Rome Statute of the International Criminal Court in July 1998.

Thus, presently ICJ is not the only international forum to address the concerns of international human rights violations but there are plurality of international criminal tribunals, quasi-judicial bodies, hybrid courts and treaty monitoring bodies that equally contribute towards the development and protection of human rights law. A primary distinguishing feature of the alternatives to ICJ is that in these forums either individuals can bring claims before them, or because they have jurisdiction to prosecute individuals for violations of human rights norms. It has been expressly acknowledged in Article 33 of the UN Charter that the peaceful settlement of disputes can be and should be sought through different ways which fall broadly into three categories: political; quasi-judicial; and judicial. Additionally, Article 95 of the Charter states in rather an unambiguous language that Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future. Our discussion in this module shall focus on the role of ICC, ICTY and ICTR in the development of international human rights law.

14.2 LEARNING OUTCOMES

- Students will be familiarized with ICTY, ICTR and the jurisprudence developed thereof.
- Students will develop a sense of reason by understanding how certain rules have existed in the ICTY and ICTR regime.

14.3 THE INTERNATIONAL CRIMINAL COURT

In the 1990s after the end of the Cold War, tribunals like the International Criminal Tribunal for the former Yugoslavia and for Rwanda were established as the result of a consensus that impunity is unacceptable. However, because they were ad hoc tribunals, established to try crimes committed only within a specific time-frame and during a specific conflict, there was general agreement that an independent, permanent criminal court was needed. The purpose was to have a judicial body that could prosecute serious crimes against humanity no matter who committed them and be able to try the perpetrators of gross violations of humanitarian law, such as those committed during international or internal military conflicts.

The International Criminal Court is governed by the Rome Statute of the International Criminal Court in 1998. The Rome Statute was adopted by 120 states on July 17, 1998. This adoption led to the legal basis for establishing the permanent International Criminal Court. However, the Statute entered into force on July 1, 2002 when it was ratified by 60 countries. It only started its work in 2003. At present, the Rome Statute has been joined by 123 countries. It is the Rome Statute that governs the jurisdiction and functioning of the ICC.

The ICC is the first permanent treaty-based international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community like genocide, crimes against humanity and war crimes. Its seat is at The Hague in the Netherlands. It is an independent international organization and is not part of the United Nations Organization like ICTY and ICTR and therefore UN members are not *ipso facto* members of the ICC. The primary source of the ICC funds is the State parties but it also receives voluntary contributions from governments, international organizations, individuals, corporations and other entities.

The Court is composed of four organs: the Presidency, the judicial Divisions, the Office of the Prosecutor and the Registry.

- **Presidency:** It consists of three judges and is responsible for the overall administration of the Court, except the Office of the Prosecutor.
- **Judicial Divisions:** It consists of eighteen judges who are responsible for conducting the court proceedings at various stages. On the basis of the stages, it is organized into the Pre-Trial Division, the Trial Division and the Appeals Division. Judges are subject to staggered election systems, with elections every three years and they generally cannot be re-elected.
- **Office of the Prosecutor:** It is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court.
- **Registry:** It is responsible for the non-judicial aspects of the administration and servicing of the Court.

The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. Therefore, its jurisdiction is complementary to the national courts. In addition, the ICC only tries those accused of the gravest crimes. ICC can be approached by the victims of crimes and their families to express their views and concerns and to claim reparation for the wrongs suffered. In the conduct of its proceedings, ICC follows the highest standards of fairness and due process.

Article 12 of the Rome Statute provides that the jurisdiction of the court extends to the parties to the Statute but a non-state party can accept the jurisdiction by lodging a declaration to this effect. According to Article 13, the court may exercise jurisdiction with respect to crimes falling in its jurisdiction in three ways:

- a) When the matter is referred to the Prosecutor by a state party to the statute under Article 14;
- b) When the matter is referred to the Prosecutor by the Security Council acting under Chapter VII of the UN Charter.
- c) When the Prosecutor himself initiates an investigation in respect of such crimes.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK

According to Article 5 of the Rome Statute, the overall jurisdiction of the Court is limited to the most serious crimes. It has jurisdiction with respect to the four types of crimes i.e.

- a) The crime of genocide;
- b) Crimes against humanity;
- c) War crimes;
- d) The crime of aggression.

According to Article 22 of the Rome Statute the principle of *Nullum crimen sine lege* is applicable which serves to safeguard a state's sovereignty, because the Court only has jurisdiction over crimes insofar as they have been included in the Statute by the negotiating states. Under Article 22, 23 and 24 the Rome Statute provides for various rights of the accused aiming at ensuring a fair trial and the non-retroactivity of the temporal jurisdiction of the court.

According to Article 21 of the Rome Statute, a hierarchy of the laws which shall apply in matters before the ICC has been provided:

- a) Statute, Elements of Crimes and its Rules of Procedure and evidence;
- b) Where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
- c) General principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of the States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

The court may apply the principles and rules of law as interpreted in its previous decisions. It has been stated in Article 21 that the application and interpretation of the applicable laws have to be consistent with internationally recognized human rights and there shouldn't be any diverse distinction on the grounds of gender, age, race, color, language, religion, or belief, political or other opinion, national, ethnic, or social origin, wealth, birth or other status.

Until now, 22 cases in 9 situations have been brought before the ICC. As of now, four States Parties to the Rome Statute – Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali – have referred situations occurring on their territories to the Court. In addition, the Security Council has referred the situation in Darfur, Sudan, and the situation in Libya – both non-States Parties. After a thorough analysis of available information, the Prosecutor has opened and is conducting investigations in all of the above-mentioned situations.

A direct relationship has been established between the ICC and the ICJ under Article 119(2) of the ICC Statute which states:

Any other dispute between two or more States Parties relating to the interpretation or application of this Statute which is not settled through negotiations within three months of their commencement shall be referred to the Assembly of States Parties. The Assembly may itself seek to settle the dispute or may make recommendations on further means of settlement of the dispute, including referral to the International Court of Justice in conformity with the Statute of that Court.

If States fail to enforce their judgments, they can rely on the potential measures that can be taken by the SC acting under Chapter VII of the Charter for supporting their judicial activity and the enforcement of their judgments.

14.4 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

The Security Council decided to establish ICTY due to circumstances of grave injustice in the former Yugoslavia since 1991. There were ravaging effects in the former Yugoslavia, Slovenia to Croatia and then to Bosnia where some instances of ethnic cleansing, which included deportations, mass executions, mass sexual assaults and rapes, and concentration camps, were being reported. At this point, the Security Council asked the UN Secretary General to establish a Commission of Experts to report on evidence of grave breaches of international humanitarian law in the former Yugoslavia. By its resolution number 808, the Security Council on 22 February 1993 decided that an international criminal tribunal should be established and asked the UN Secretary General to prepare a report. The Secretary General, Ghali, reported within 60 days with the Statute for the formation of the ICTY.

The International Criminal Tribunal for the former Yugoslavia was established on 25 May 1993 by the resolution number 827 of the Security Council. This resolution had to be passed by the Security Council as there were numerous complaints of serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The ICTY was the first war crimes court created by the UN and the first international war crimes tribunal since the Nuremberg and Tokyo tribunals. It was established by the Security Council in accordance with Chapter VII of the UN Charter.

According to Article 2, 3, 4 and 5 on the subject-matter jurisdiction and Article 9 (1) on jurisdiction *ratione temporis*, the ICTY has jurisdiction over grave breaches of the Genocide Conventions of 1949, violations of the laws or customs of war, genocide and crimes against humanity committed in the territory of the former Yugoslavia since 1 January 1991. The ICTY has a special detention unit located at The Hague.

The mission of the ICTY is fourfold:

- a) to bring to justice persons allegedly responsible for serious violations of international humanitarian law;
- b) to render justice to the victims;
- c) to deter further crimes;
- d) to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia

The case law of the ICTY is quite vast and covers many issues of international human rights and humanitarian law. Until now the ICTY has charged over 160 persons including heads of state, prime ministers, army chiefs-of-staff, interior ministers and many other high- and mid-level political, military and police leaders from various parties to the Yugoslav conflicts.

14.5 THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

In April 1994, a massive ethnic conflict broke out in central Africa resulting first in the genocidal murder of about half a million members of the Tutsi tribe by members of the Hutu

tribe in Rwanda, and then the displacement of hundreds of thousands of Hutus into the territory of neighbouring countries.

After 18 months of the establishment of the ICTY, upon receiving request of the government on the territory of which crimes were taking place, the International Criminal Tribunal for Rwanda (ICTR) was established on 8 November 1994 by resolution number 955 of the Security Council due to serious violations of humanitarian law had been committed in Rwanda. To promote international peace and security in Rwanda, the Security Council established ICTR to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda between 1 January 1994 and 31 December 1994. This is one primary difference between the ICTY and ICTR where the former has a start but no end date. The ICTR is located in Arusha, Tanzania. Both ICTY and ICTR share the Appeal Chamber which is based at The Hague. Comparatively, ICTR is said to have made a greater contribution towards securing international peace and justice as it has obtained custody of several high-level government and military officials suspected of planning and inciting the Rwandan genocide. Since it opened in 1995, the ICTR has indicted 93 individuals whom it considered responsible for serious violations of international humanitarian law committed in Rwanda in 1994. The ICTR is the first ever international tribunal to deliver verdicts in relation to genocide, and the first to interpret the definition of genocide set forth in the 1948 Geneva Conventions and the first ever tribunal to hold members of the media responsible for broadcasts intended to inflame the public to commit acts of genocide. The ICTR delivered its last trial judgement on 20 December 2012. Now the work is only pending before Appeals Chamber. The ICTR will formally close with the return of the Appeals Chamber's judgement in its last appeal.

14.6 ICC VERSUS ICTY AND ICTR

ICTY and ICTR are called ad hoc tribunals and they have a closer relationship with the Security Council, as compared to the ICC. They have a wide range of powers owing to the fact that they were established by the Security Council acting under Chapter VII of the UN Charter. According to Article 29 of the UN Charter, ICTY and ICTR are subsidiary organs of the Security Council. As such they are dependent on the UN in administrative and financial matters, although as judicial institutions, they are independent of any one State or group of States, including their parent body, the Security Council. The ICTY and its sister tribunal, the ICTR, have been endowed with primary jurisdiction, in contrast to the jurisdiction of ICC. Under Article 29 of the ICTY Statute, UN member States have a legal obligation to render co-operation and judicial assistance to ICTY as determined by the SC under Articles 48 and 49 of Chapter VII of the Charter.

14.7 HYBRID COURTS

The beginning of the 21st century witnessed the birth of the third generation of international criminal bodies which are referred to as the hybrid criminal bodies. Currently, the four bodies referred to as hybrid courts are:

- a) Crimes Panels of the District Court of Dili, East Timor;
- b) regulation 64 Panels in the Courts of Kosovo;

- c) Court for Sierra Leone; and
- d) Extraordinary Chambers in the Courts of Cambodia.

Each of these courts is composed of independent judges, working on the basis of predetermined rules of procedure, and rendering binding decisions. To fulfil their objectives, they need to rely on international cooperation and judicial assistance by states and international organizations. Despite having a commonality of objectives when compared to the tribunals discussed above, these hybrid courts are different to the extent that they are part of the judiciary of a given country, while in others, they have been grafted onto the local judicial system. But in all cases their nature is mixed, incorporating at the same time international and national features which is why they are referred to as hybrid courts.

14.8 SUMMARY

We learnt in this module that ICTY, ICTR and ICC have played a significant role in the development and interpretation of treaty provisions in the realm of international human rights law. The ICC, being the first permanent international criminal court continues to discharge its obligations as stated in the Rome Statute of the International Criminal Court in 1998. For the ad hoc tribunals – ICTY and ICTR, the former continues to adjudge the remaining trials of the first instance and any appeal proceedings that had been initiated prior to 1 July 2013. Any appeal proceedings initiated since 1 July 2013 have been under the jurisdiction of a successor body, the Mechanism for International Criminal Tribunals. ICTR formally closed its working in December 2015. Throughout its period of working, ICTR tried and convicted several prominent figures, including former Prime Minister Jean Kambanda; the former army chief of staff, General Augustin Bizimungu; and the former Defense Ministry chief of staff, Colonel Théoneste Bagosora. The ICTR also established important jurisprudence in international criminal law and served as a precedent for the creation of the ICC.

14.9 Glossary

Ad hoc Tribunal	A temporary tribunal established for a specific conflict or situation.
Aggression	The use of armed force by one State against another in violation of the UN Charter.
Command Responsibility	Liability of military or civilian superiors for crimes committed by subordinates when they knew or should have known and failed to prevent or punish them.
Complementarity	Principle that the ICC acts only when national courts are unwilling or unable to prosecute.
Crime Against Humanity	Widespread or systematic attacks against civilians.

Genocide	Acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.
ICC	International Criminal Court.
ICTR	International Criminal Tribunal for Rwanda.
ICTY	International Criminal Tribunal for the Former Yugoslavia.
Impunity	Freedom from punishment despite committing serious crimes.
Jurisdiction	Legal authority of a court to hear and decide cases.
Rome Statute	The treaty establishing the International Criminal Court.
War Crimes	Serious violations of international humanitarian law committed during armed conflict.

14.10 REFERENCES

Primary Sources

1. Rome Statute of the International Criminal Court, 1998.
2. United Nations Security Council Resolution 827 (1993).
3. United Nations Security Council Resolution 955 (1994).
4. Geneva Conventions, 1949.
5. Additional Protocols I & II, 1977.
6. Convention on the Prevention and Punishment of the Crime of Genocide, 1948.

Books

1. Antonio Cassese, *International Criminal Law* (3rd ed., Oxford University Press, 2013).
2. Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* (4th ed., Cambridge University Press, 2019).
3. William A. Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press).
4. Gerhard Werle & Florian Jessberger, *Principles of International Criminal Law* (Oxford University Press) .

Articles

1. William Schabas, "The International Criminal Court: A Commentary on the Rome Statute."
2. Antonio Cassese, "The Role of International Criminal Tribunals in International Law."
3. M. Cherif Bassiouni, "The Pursuit of International Criminal Justice."

14.11 SUGGESTED READING

1. Antonio Cassese – *International Criminal Law*.
2. William A. Schabas – *The International Criminal Court*.
3. Robert Cryer et al. – *An Introduction to International Criminal Law and Procedure*.
4. Gerhard Werle & Florian Jessberger – *Principles of International Criminal Law*.
5. Malcolm N. Shaw – *International Law*.
6. Dinah Shelton – *Encyclopedia of Genocide and Crimes Against Humanity*.
7. M. Cherif Bassiouni – *Introduction to International Criminal Law*.

14.12 SHORT ANSWER QUESTIONS (SAQS)

1. What is the International Criminal Court (ICC)?
2. Explain the principle of complementarity.
3. State the jurisdiction of the ICC.
4. Why was the ICTY established?
5. Mention the crimes prosecuted by the ICTY.

14.13 TERMINAL QUESTIONS

1. Examine the role of the ICC in promoting international criminal justice.
2. Compare the ICC, ICTY, and ICTR with reference to their establishment, jurisdiction, and functions.
3. Critically evaluate the achievements and limitations of the ICC, ICTY, and ICTR.
4. Discuss the contribution of international criminal tribunals to the enforcement of international humanitarian law.
5. Explain the significance of the principle of complementarity in the functioning of the International Criminal Court (ICC).