



# THE CONCEPT OF HUMAN RIGHTS LAW IN INDIA AND INTERNATIONAL ARENA

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*Abstract--*The term ‘Human Rights’ is a dynamic concept. These rights may be called the basic rights, the fundamental rights, the natural rights or the inherent rights. Human rights represent basic values common to all cultures, and must be respected by countries worldwide. The principal objective of both Indian and international laws is to protect the human personality and its fundamental rights. Hence the realization of human rights should be the goal of every state. The subject of human rights has been evoking public interest all over the world. The universal regime of promotion and protection of human rights has been conceived and has grown under the auspices of the Organization of the United Nations. The evolution of the international human rights regime has often been shaped by the push and pulls of political and historical forces and events at the expense of alternative approaches. The paper highlights some of the important conventions and treaties dealing with human rights and the procedural norms that mainly establish monitoring mechanisms to offer some protection against the State at the international level. The paper also focuses on the concept of human rights in Constitution and briefly highlights the provisions of The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006-No. 43 of 2006].

## INTRODUCTION

Human rights are at the core of international law and international relations. They represent basic values common to all cultures, and must be respected by countries worldwide. The international law of human rights is the outcome of an evolving process where the responsibility of States derived from their sovereignty has been connected with one of the fundamental values of the international community after World War II. The international law of human rights comprises of both, substantive norms (enunciating rights and duties) and procedural norms that mainly establish monitoring mechanisms to offer some protection against the State at the international level.<sup>1</sup>

The term “International Law” is usually used to denote norms regulating transactions between sovereign States. Its main concern is with the regulation of the rights, duties and interest of States. However it has always been a subject of discussion as to whether this law is concerned exclusively with the above matters of the States.

The dominance of positivist thinking in the field of International Law prevented Human Rights being projected as a serious concern of the international community.<sup>2</sup> This was mainly due to the thinking that it was for the nation state to make appropriate legislation. In particular, the universal regime of promotion and protection of human rights has been conceived and has grown under the auspices of the Organization of the United Nations.



## HUMAN RIGHTS PROVISIONS UNDER THE UN CHARTER

It was in the year 1942, that twenty-six governments signed the Declaration of the United Nations in Washington, D.C., the United States, and another twenty-one governments followed suit before the end of the Second World War. In 1945, representatives of 50 states met in San Francisco at the United Nations Conference on International Organisation to draw up the United Nations Charter, an international treaty that sets out basic principles of international relations. The UN Charter was signed on 26 June 1945 by the representatives of the 50 states, making international concern for human rights an established part of international law.<sup>3</sup>

The United Nations has six principal organs: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat. In addition, the United Nations system consists of several specialized agencies and a number of other specialized bodies dealing with human rights.

When states become members of the UN, they accept the obligations of the UN Charter that sets out the four main purposes of the UN:

1. to maintain international peace and security;
2. to develop friendly relations among nations;
3. to co-operate in solving international problems and in promoting respect for human rights; and
4. to be a centre for harmonizing the actions of nations.

The UN Charter refers to human rights in the Preamble and Articles 1, 8, 13, 55, 56, 62, 68 and 76:

Article 1 defines one of the objectives of the UN as promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion’.

Article 8 states that ‘the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs’.

Article 13 says that the responsibilities, functions and powers of the General Assembly shall include ‘assisting in the realisation of human rights and fundamental freedoms for all’.

The most important provisions are probably those contained in Articles 55 and 56 of the Charter. Article 55 describes the purposes of the UN in international co-operation, which include under (c): ‘universal respect for and observance of human rights and fundamental freedoms for all without discrimination as to race, sex, language, or religion’. Article 56 contains a pledge by all members ‘to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.

## THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

The signing of the *Universal Declaration of Human Rights* on December 10, 1948, was a momentous occasion. Representatives of 48 countries came together to make a profound statement on the value and dignity of human life. After several drafts and much debate, the final version of the *Universal Declaration of Human Rights* emerged. It was a list of basic rights that the international community agreed upon as the inborn (inherent) legacy due to all human beings on earth.

The Universal Declaration of Human Rights reflects fundamental beliefs shared by countries around the world regarding human rights. The document is divided into two sections- the preamble, which describes the reasons



for creating the *Universal Declaration of Human Rights* and the 30 Articles that list out basic human rights. There are two main themes contained in the preamble. The first is the belief that in order to support a better quality of life for all, laws that protect human rights must be enforced and respected universally. The second is the belief that, by upholding human rights, "freedom, justice, and peace in the world" can be achieved. In short, respecting human rights means a better world for everyone. There are 30 articles in the *Universal Declaration of Human Rights*, covering various categories of human rights, such as basic rights (e.g., life, security of the person, freedom); political rights (e.g., right to vote); civil rights and liberties (e.g., freedom of opinion and expression); equality rights (e.g., the right to be free from discrimination); economic rights (e.g., the right to fair wages and safe working conditions); social rights (e.g., access to education and adequate health care); and cultural rights (e.g., the right to speak your native language and practice your culture). Although each of these rights may differ from one another, they are all considered to be part of an indivisible set of human rights.<sup>4</sup>

The Declaration provides that everyone has the rights to life, liberty and security of the person;<sup>5</sup> to recognition as a person before the law;<sup>6</sup> to equality before the law;<sup>7</sup> to specified judicial safeguards in criminal trials;<sup>8</sup> to freedoms of movement within the country and the right to leave;<sup>9</sup> to a right to asylum;<sup>10</sup> to a right to nationality;<sup>11</sup> to the right of property;<sup>12</sup> to the freedom of thought, conscience, religion, opinion and expression;<sup>13</sup> peaceful assembly and association;<sup>14</sup> to the right to social security;<sup>15</sup> right to work and to join trade unions for protection;<sup>16</sup> to the right to an adequate standard of living and education;<sup>17</sup> to participate in the cultural life of the community; to enjoy the arts and share in the scientific advancement and benefits.<sup>18</sup> These rights are provided for the overall development of the individual on political, economic and social fronts both in the national and international sphere.

#### THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The *International Covenant on Civil and Political Rights* was adopted by the United Nations General Assembly on 16 December 1966. At present there are 74 signatories and 168 parties to this covenant.<sup>19</sup> The Covenant is divided into six major Parts, comprising 53 Articles, with Parts I and II setting out a series of provisions generally applicable to all the rights described in the Covenant. Part III is the "backbone" of the Covenant, elaborating the substantive individual rights. The final Parts deal with the establishment of the Human Rights Committee, the Committee's monitoring functions and a variety of technical matters<sup>20</sup>. Articles there in are classified under the following categories:

Articles 1 to 3 and 5 of part I and part II of the Covenant are general. Article 1, which forms Part I, guarantees the right of self determination. This right differs from the other Covenant rights in that it is a right expressly ascribed to "peoples" rather than to individuals. It is also the only right that is common to both Covenants, as article 1 of the International Covenant on Economic, Social and Cultural Rights is identical.

Through Article 2 which occurs in part II of the Covenant, each state party to the Covenant "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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<sup>21</sup>. Where legislative or other measures do not exist to give effect to the rights recognized in the Covenant, each State party undertakes to take the necessary steps, in accordance with its Constitutional processes and with provision of the present Covenant, to

adopt such legislative or other measures to give effect to the rights.<sup>22</sup>

Through Article 3, the parties to the Covenant undertake to ensure the principle of equal right of men and women to enjoy all Civil and Political Rights set forth in the Covenant.

Part II of the Covenant concludes with Article 5, a general protective provision stating that nothing in the Covenant confers the right to limit or destroy any of its provisions<sup>23</sup> and that a State party, whose domestic law provides greater protections than those contained in the Covenant, may not use that as an excuse to restrict or derogate from the fundamental rights contained in the Covenant.<sup>24</sup>

Article 4 of the Covenant recognizes that exceptional situations affecting a State party may make the guarantee of some rights difficult or impossible, at a practical level, for a temporary period of time.<sup>25</sup> Article 6 deals with inherent or punishment etc., Article 7 Prohibition of torture or cruel, inhuman or degrading treatment or punishment etc., Article 8 -Paragraphs 1 and 2 – deals with prohibition of slavery, slave trade or servitude, Article 11 deals with Prohibition of imprisonment merely on the ground of inability to fulfill a contractual obligation, Article 15 deals with Prohibition of punishment on any criminal offence not constituting a criminal offence under national or International Law and ex-post facto laws.

Article 6 to 27<sup>26</sup> of Part III of the Covenant enumerates specific substantive Civil and Political Rights. It may be regarded as core provisions for the protection of the life, liberty and physical security of the individual. These provisions also stipulate the narrow confines within which the death penalty may legitimately be imposed in States parties where that penalty has not been abolished. Articles 12 and 13 deal with movement into, out of and within a State, with particular rules applicable to the expulsion of aliens.

Articles 14 to 16 deal with how a person must be treated by the judicial process. Article 14 guarantees the right to a fair trial in both criminal and civil cases, a right of fundamental importance. Article 15 prohibits retrospective criminal punishment, while Article 16 states simply that everyone has the right to be recognized as a person before the law. Articles 17 to 22 set out fundamental freedoms to be enjoyed free of unjustified external interference. Articles 23 and 24 recognize the particular role of the family unit and address issues of marriage and the rights of children. Article 25 stands alone as the major right to political participation in the Covenant, outlining the rights to vote and to be elected at genuine periodic elections by universal suffrage and secret ballot as well as the rights to take part in public affairs and to have equal access to the public service. Part III of the Covenant concludes with Article 27, which guarantees persons belonging to ethnic, religious or linguistic minorities the right, in community with other members of the group, to enjoy and practice their own culture, religion or language. While nominally expressed as an individual right, this provision, by definition, may best be understood as a group right protecting a community of individuals.

#### THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

*The International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>27</sup> was adopted by the UN General Assembly in 1966.

It is composed of thirty-one articles contained in six sections: the preamble and parts I to V. Part I, which is identical to the parallel part of this and comprises solely Article 1, proclaims the right of all peoples to self-determination, including the right to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources.

The heart of the Covenant is found in part III, Articles 6-15, which outlines the rights to be protected. These



include, broadly, the right to work<sup>28</sup>, the right to fair conditions of employment<sup>29</sup>, the right to join and form trade unions<sup>30</sup>, the right to social security<sup>31</sup>, the right to protection of the family<sup>32</sup>, the right to an adequate standard of living, including the right to food, clothing, and housing<sup>33</sup>, the right to health<sup>34</sup>, the right to education<sup>35</sup> and the right to culture<sup>36</sup>.

Article 26 to 31 i.e., Part V of the Economic Covenant deals with final or concluding Article. It deals with provisions, such as, signature, ratification, accession<sup>37</sup>, entry into force<sup>38</sup>, application<sup>39</sup>, amendments<sup>40</sup> and authentic language of the Covenant<sup>41</sup>.

#### HUMAN RIGHTS IN INDIA

The Constitution of India which came into force in 1950 is an eloquent testimony to the nation's deep commitment to human rights. It proclaims basic human rights and fundamental freedoms and guarantees their enjoyment by all, irrespective of caste, color, sex or religion. It has also created legal institutions to enforce the fundamental rights comprising liberty, equality and social justice.<sup>42</sup>

Since independence, India had sought to institutionalize its commitment to human rights by a deliberate choice of an open society and democratic polity based on universal adult suffrage, respect for the dignity of the individual, the rule of law and multi-party system.

India is also a signatory to the UDHR and party to various International Covenants, Conventions and Treaties. Furthermore, greater accesses to the statesmen of various countries and international human rights agencies have been facilitated. It is to reaffirm the atmosphere of freedom and India's commitment to its own catalogue of rights.<sup>43</sup> Despite all these instrumentalities and institutional arrangements meant for the protection of human rights standards in our country, there have been large scale reports of violation of human rights in different parts of the State.

#### HUMAN RIGHTS UNDER THE PROTECTION OF HUMAN RIGHTS ACT, 1993<sup>44</sup>

The Act, 1993 was enforced on 28th January 1993. The National Human Rights Commission in India is an autonomous public body constituted on 12 October 1993 under the ordinance of 28 September 1993. "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International covenants and enforceable by courts in India. The National Human Rights Commission is in New Delhi.

Chapter III of the Act deals with powers and functions of the Commission. The Commission is granted the powers, to look into the matters concerning violation of human rights. The Commission can also take action in cases where the victim has filed an application for violation of human rights. Apart from this the commission may keep a check on jails, spread human rights literacy, and encourage non-governmental organisations to work in the field of human rights. The Commission under section 13, while inquiring into complaints under the Act, has all the powers of a civil court trying a suit under the *Code of Civil Procedure, 1908*. Every proceeding before the Commission will be considered a judicial proceeding under sections 193, 228, and 196 of the *Indian Penal Code*, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the *Code of Criminal Procedure, 1973*. The Commission is bestowed with investigative powers while taking help of government officer's under section 14.

Section 21 of the Act provides for establishment of State Human Rights Commission. The State Commission



shall inquire only into matters listed in List II and List III of seventh schedule. Under section 30 of the Act for the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government, with the concurrence of the Chief Justice of the High Court, by notification, can specify for each district, a Court of Session to be a Human Rights Court. A special public prosecutor will also be appointed to try such cases.

#### CONCLUSION

In conclusion it can be said that under Article 1 and 55 of the U.N. Charter the duties of the organization is to promote respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. Each member state pledges under Article 56 to take joint and separate action to achieve these purposes.<sup>45</sup>

There is a great controversy in regard to the legal significance of the Universal Declaration. On the one hand, there are those writers who subscribe to the view that the Universal Declaration is not a legally binding instrument on the other hand, there are some writers who have expressed the view that the Declaration might not have been binding when it was adopted in 1948 but it has now become binding or assumed legal implications. Besides these two views, there are a number of authors who have expressed their opinion, that the Universal Declaration though not legally binding, has a great moral and political force behind it and serves as general guide, code of conduct or yardstick with which the action of men and women and nations are judged so far as the respect for and observance of Human Rights are concerned.

One of the major shortcomings of the *ICESCR* as a human rights instrument is the fact that it does not possess the equivalent of a system for the consideration of individual or group petitions. Although the *ICESCR* has recently drawn up a draft Optional Protocol to allow for the consideration of individual communications, it is unlikely that this will be adopted by states in the near future.

#### REFERENCES

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<sup>2</sup> Shaw Malcolm N, *International Law*, 5<sup>th</sup> ed., (Cambridge: Cambridge University Press, 2003), p. 200

<sup>3</sup> For the background and general structure of the United Nations and its effect on international law, see "International Law and the U.N.", at *St. John's L. Rev.* (1947), p.144.

<sup>4</sup> Available at, [http://www.edu.gov.mb.ca/k12/cur/socstud/foundation\\_gr9/blms/9-1-2e.pdf](http://www.edu.gov.mb.ca/k12/cur/socstud/foundation_gr9/blms/9-1-2e.pdf)., visited on 10-02-2016

<sup>5</sup> *Universal Declaration of Human Rights*, 1948, Article 3

<sup>6</sup> Article 6, *Ibid.*

<sup>7</sup> Article 7, *Ibid.*

<sup>8</sup> Article 8 & 11, *Ibid.*

<sup>9</sup> Article 13, *Ibid.*

<sup>10</sup> Article 14, *Ibid.*

<sup>11</sup> Article 15, *Ibid.*

<sup>12</sup> Article 17, *Ibid.*

<sup>13</sup> Article 18 & 19, *Ibid.*



<sup>14</sup> Article 20, *Ibid.*

<sup>15</sup> Article 22, *Ibid.*

<sup>16</sup> Article 23 & 24, *Ibid.*

<sup>17</sup> Article 25 & 26, *Ibid.*

<sup>18</sup> Article 27, *Ibid.*

<sup>19</sup> Status as on 03-03-2016, available at, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&lang=en), visited on 03-03-2016.

<sup>20</sup> Available at, <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>, visited on 03-03-2016

<sup>21</sup> Article 2, Para 1, *Ibid.*

<sup>22</sup> Article 2, Para 2, *Ibid.*

<sup>23</sup> *Ibid.* Article 5, Para 1,

<sup>24</sup> *Ibid.* Article 5, Para 2,

<sup>25</sup> *Ibid.* Article 4, Para 1,

<sup>26</sup> See <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>, Human Rights, Civil and Political Rights, Fact Sheet No 15 (Rev.1)

<sup>27</sup> *International Covenant on Economic, Social and Cultural Rights*, adopted on 16 Dec. 1966, GA Res. 2200 (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, came into force on 3 Jan. 1976.

<sup>28</sup> See *ICESCR*, Article 6

<sup>29</sup> Article 7, *Ibid.*

<sup>30</sup> Article 8, *Ibid.*

<sup>31</sup> Article 9, *Ibid.*

<sup>32</sup> Article 10, *Ibid.*

<sup>33</sup> Article 11, *Ibid.*

<sup>34</sup> Article 12, *Ibid.*

<sup>35</sup> Article 13, *Ibid.*

<sup>36</sup> Article 15, *Ibid.*

<sup>37</sup> Article 26, *Ibid.*

<sup>38</sup> Article 27, *Ibid.*

<sup>39</sup> Article 28, *Ibid.*

<sup>40</sup> Article 29, *Ibid.*

<sup>41</sup> Article 31, *Ibid.*

<sup>42</sup> *The statement by Dr. Man Mohan Singh, Former Minister of finance in the Narasima Rao Govt' at the 50<sup>th</sup> World conference on human Rights. The observer dated 22<sup>nd</sup> January, 1993*, available at, [http://pmindia.gov.in/former\\_pm/dr-manmohan-singh](http://pmindia.gov.in/former_pm/dr-manmohan-singh)

<sup>43</sup> *Ibid.*, p.11

<sup>44</sup> Amended vide Protection of Human Rights (Amendment) Act, 2006 (No. 43 of 2006)

<sup>45</sup> Ireland Patricia, "International Protection of Human Rights", *Inter American Law Review*, Vol. 7, No. 2 (Jun., 1975), p.325.