



Introduction to International Human Rights Law

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Overview

- ▶ Definition
- ▶ Emergence of International Human Rights Law: Universal Declaration of Human Rights
- ▶ Categories of Human Rights
- ▶ International Bill of Rights
 - (a) Universal Declaration of Human Rights
 - (b) ICCPR
 - (c) ICESCR
- ▶ Human Rights Covenants
- ▶ Sources of Human Rights:
 - (a) Treaties
 - (b) Customary International Law

Overview

- ▶ How Human Rights Work: Civil and Political Rights
 - (i) Absolute Rights
 - (ii) Limited Rights
 - (iii) Qualified Rights
- ▶ Mechanism to Protect Human Rights
- ▶ Advantages of Ratification
- ▶ Domestic Application of Human Rights



Definition

- ▶ Human Rights are vested in every person by virtue of his/her being a human being
- ▶ Human Rights are based on the principle of respect for an individual. Their fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity

Emergence of International Human Rights Law: Pre 1946

- ▶ Written precursors to the Universal Declaration of Human Rights
 1. Magna Carta (1215)
 2. English Bill of Rights (1689)
 3. French Declaration on the Rights of Man and Citizen (1789)
 4. US Constitution and Bill of Rights (1791)
- ▶ Many of these documents excluded women, people of color, members of certain social, religious, economic and political groups.

Universalism v Cultural Relativism

- ▶ Conflicting ideas
- ▶ Universalism holds that each human being possesses certain inalienable rights simply because he or she is a human,
- ▶ Cultural relativism is the assertion that human values, far from being universal, vary a great deal according to different cultural perspectives

Universal Declaration of Human Rights

- ▶ Aftermath of the Second World War
- ▶ General principle was that human rights did not have the status of international law and therefore many States did not intervene
- ▶ Profound impact on the development of global standards for the protection of rights
- ▶ Landmark achievement: internationalization of human rights
- ▶ For the first time, the International Community set down standards of human rights and freedoms that could be enjoyed by everyone everywhere.
- ▶ Respect for human rights is the 'foundation of freedom, justice and peace' in the world.
- ▶ Western centric

Universal Declaration of Human Rights

- ▶ The right to life, liberty and security of person
- ▶ The right to an adequate standard of living
- ▶ The right to seek and enjoy in other countries asylum from persecution
- ▶ The right to own property
- ▶ The right to freedom of opinion and expression
- ▶ The right to education
- ▶ Freedom of thought, conscience and religion, and
- ▶ The right to freedom from torture and degrading treatment among others.

Five Categories of Human Rights

1. Civil: The right to be treated as an equal to anyone else in society

- (a) Life
- (b) Opinion
- (c) Free speech
- (d) Race
- (e) Non discrimination on the basis of sex

2. Political: The right to vote, freedom of speech, information

- (a) Vote in elections
- (b) Freely form or join political parties
- (c) Live in an independent country
- (d) Stand for public office

3. Economic: The right to participate in an economy that benefits all; and to desirable work

Five Categories of Human Rights

4. Social

- (a) Housing
- (b) Education
- (c) Health Services
- (d) Recreation facilities
- (e) Clean environment
- (f) Social Security

5. Cultural: The right to freedom of religion, to speak the language and to practice the culture of one's own choice

The International Bill of Rights

- ▶ Universal Declaration of Human Rights (UDHR)
- ▶ International Covenant on Civil and Political Rights (ICCPR)
- ▶ International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Covenant on Civil and Political Rights

- ▶ ICCPR details the basic civil and political rights of individuals and duties attached to the State
- ▶ Among these rights are:
 - (i) The right to life
 - (ii) The right to liberty and freedom of movement
 - (iii) The right to equality before the law
 - (iv) The right to presumption of innocence until proven guilty etc.
- ▶ ICCPR establishes the UN Human Rights Committee (HRC) to consider reports submitted by parties on the measure they have adopted; receive and consider communications from individuals claiming to be victims of violations

International Covenant on Economic, Social and Cultural Rights (ICESCR)

- ▶ Rights included in the ICESCR include
 - (a) Right to work
 - (b) Right to equal pay for equal work
 - (c) Right to strike
 - (d) Right to social security
 - (e) Right to an adequate standard of living, including food clothing and housing (Roti, Kapra, Makaan!)
 - (f) Right to education
- ▶ As with all the main UN human rights treaties, each nation that has ratified the Covenant is required to submit periodic reports on its implementation of the rights contained within it.

Other Human Rights Treaties

- ▶ Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979
- ▶ Convention against Torture, Inhuman and Degrading Punishment or Treatment (CAT), 1984
- ▶ Convention on the Rights of the Child (CRC), 1989 etc.

Sources of Human Rights

- ▶ Human Rights are principally guaranteed through law.
- ▶ Inherent within all people and are identified and articulated through
 - (I) Treaties
 - (II) Customary International Law

Treaties

- ▶ Agreement by States to be bound by particular rules
- ▶ International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements
- ▶ Legally binding on those States which have become party to it by ratification
- ▶ Considered hard law as opposed to guidelines, rules and regulations which are soft law

Customary International Law

- ▶ Rules derived from the consistent conduct of States acting out of the belief that the law required them to act that way
- ▶ General and consistent practice of states
- ▶ As such customary international law must :
 - Be derived from a clear consensus among states;
 - As exhibited both by widespread conduct; and
 - A discernible sense of obligation
- ▶ May not be declared by a majority of States
- ▶ Discerned through widespread practice
- ▶ Two essential elements to customary international law
 - (1) General Practice (2) Jus Cogens

Customary International Law: General Practice

- ▶ A custom may be said to exist only where there is a certain degree of concurrency of behavior
- ▶ ICJ: for a rule to become customary international law, evidence must be shown of a 'constant and uniform usage practiced by States'
- ▶ May include treaties, decisions of national and intl courts, national legislation, diplomatic correspondence, opinions of national legal advisors and the practice of international organizations

Customary International Law: Jus Cogens

- ▶ Fundamental principle of international law that is accepted by the international community of states as a norm from which no derogation is permitted

How Human Rights Work

- ▶ Evolutive/dynamic interpretation
- ▶ Cannot be theoretical or illusory but practical and effective
- ▶ Genuinely accessible
- ▶ For eg. Unavailability of legal aid for someone who cannot afford to pay for legal advice, meant that in reality there is no access to court even though that right exists in theory

Categories of Civil and Political Rights

- ▶ Absolute Rights
- ▶ Limited Rights
- ▶ Qualified Rights

Absolute Rights

- ▶ Prohibition on Torture, Inhuman or Degrading Treatment
- ▶ *A v UK*: a step-father was prosecuted for assault on his step son; jury accepted the defense of lawful chastisement. When taken to the European Court of Human Rights in Strasbourg it was held that there was no justification for degrading treatment.
- ▶ *Chahal v UK*: torture upon deportation back to India- could not be deported despite assurances from the Indian government.

Limited Rights

- ▶ The right to life and liberty
- ▶ Limits to this right (Moratorium on death penalty has been lifted in Pakistan)
- ▶ Right to a fair trial
- ▶ Trial must as a whole be fair subject to certain specific limits

Qualified Rights

- ▶ Where the right is first asserted and then permissible qualifications and restrictions are applied
- ▶ Freedom of expression: where it will be lawful to interfere
- ▶ The burden of proof is on the individual to establish that there has been an interference with their rights and the burden then shifts on the State to justify the interference

Mechanisms to Protect Human Rights

- ▶ UNHRC's Universal Periodic Review
- ▶ All UN Members must submit to a four yearly audit of human rights protection within their jurisdictions
- ▶ Based on three reports:
 - (i) a national report prepared by the government
 - (ii) a report by the Office of the High Commissioner for Human Rights (OHCHR) which includes information from other UN agencies and programs and civil society organizations
 - (iii) Outcome report listing recommendations made to the state under review including those
- ▶ Universal Periodic Review is a peer review mechanism
- ▶ Dialogue between MS on the Human Rights Council and the State under review
- ▶ Process is intended to be cooperative, constructive, non confrontational and non-political
- ▶ There are no punitive measures

Advantages of Ratification

- ▶ For the cause of human rights: enforceability of rights, greater realization of rights
- ▶ Reporting measure ensures regular, external and independent scrutiny of a State's compliance with its human rights obligations
- ▶ Certainty around the extent and nature of a State's obligations
- ▶ External opportunities: EU's Generalized Scheme of Preferences (GSP Plus): special incentive arrangement for sustainable development and good governance
 - Assists developing countries in exporting their products to the European Union
 - Requires Pakistan to ratify and effectively implement 27 International Conventions.
- ▶ Reputational Advantage

Domestic Application of Human Rights

▶ Pakistan has ratified the following treaties:

1. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (defined torture as: infliction of severe physical and/or mental suffering committed under the color of law)

- Ratified on 23.06.2010
- Article 14 of the Constitution specifically deals with prohibiting torture
- S. 15, AACPR, Police Order 2002, Pakistan Prison Rules 1978, Pakistan Army Act, Abolition of the Punishment of Whipping Act, 1996 etc.
- No definition of torture

2. Convention on the Rights of the Child

- Ratified on 12.11.1990
- Included a reservation that the provisions of the CRC would be interpreted according to the principles of Islamic Law and values, later withdrawn in 1997.

▶ Juvenile Justice System Ordinance 2000, Child Marriages Restraint Act, 1929, Employment of Children Act, 1991, Employment of Children Rules, 1995, Protection of Breastfeeding and Child Nutrition Ordinance, 2002, KP Child Protection and Welfare Act 2010, Sindh Children Protection Authority Act, 2011 etc.

Domestic Application of Human Rights

- ▶ Convention on the Elimination of Discrimination Against Women, 1981 (CEDAW)
 - Ratified on 12.03.1996
 - Protection of Women (Criminal Laws Amendment) Act, 2006, Criminal Law (Amendment) Act, 2010, The Protection against Harassment of Women at the Workplace Act, 2010, Prevention of Anti-Women Practices (Criminal Law Amendment) Act, 2011, The Acid Control and Acid Crime Prevention Act, 2010, The Women in Distress and Detention Fund (Amendment) Act, 2011, Domestic Violence (Prevention and Protection) Act, 2012
- ▶ Convention on the Rights of Persons with Disabilities, 2008 (CRPD)
 - Ratified on 05.07.2011
- ▶ Convention on the Prevention and Punishment of the Crime of Genocide, 1948
 - Ratified on 12.10.1957
 - Pakistan Penal Code, 1860, Anti Terrorism Act 1997
- ▶ International Convention on the Elimination of All Forms of Racial Discrimination, 1969 (ICERD)
 - Ratified on 21.09.1966

Domestic Application of Human Rights

- ▶ International Covenant on Civil and Political Rights
 - Ratified on 23.06.2010
- ▶ International Covenant Economic, Social and Cultural Rights
 - 17 April 2008
 - Constitution of Pakistan, The Sindh Right of Children to Free and Compulsory Education Act, 2013, Punjab Compulsory Primary Education Act, 1994, KP Compulsory Primary Education Act, 1996, The Balochistan Compulsory and Free Education Ordinance, 2013. Reproductive Healthcare and Rights Act, 2013 etc.

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- ▶ Despite ratification, there is a failure to file country reports and where they are submitted they are often late by years
 - ▶ International Covenant on Economic, Social and Cultural Rights, ratified in 2008, was submitted seven years late in October 2015.
 - ▶ They lack up-to-date information, poorly drafted, amalgamation of laws produced verbatim.
 - ▶ Information on complaints, reparations, and compensation is not sufficiently provided. Neither are changes in legislation or the development of new case law sufficiently examined.
 - ▶ The required levels of fact-finding and analysis are not taking place.
 - ▶ Ministry of Law, Justice and Human Rights is responsible for preparing country reports; problems- understaffed, constitutes police officers and civil servants without expertise in humans rights legal framework; lack of permanent staff.
 - ▶ Ministry of Foreign Affairs forwards the report to the permanent UN mission in Geneva
 - ▶ Recommendations: improve reporting mechanisms, capacity building, separate HR research and reporting unit should be established, treaty implementation cells.

Thank you!

