



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

AN ANALYSIS ON PROTECTION OF HUMAN RIGHTS UNDER VARIOUS CONVENTIONS

AUTHORED BY *PROF. DR. ANJINA REDDY K.R., PRINCIPAL,
RV Institute Of Legal Studies, Bengaluru, Karnataka, India

Abstract

All people have the inherent right to human rights, irrespective of their gender, colour, nationality, ethnicity, language, religion, or any other characteristic. The freedom from slavery and torture, the right to life and liberty, the freedom of speech and thought, the right to employment and education, and numerous other rights are examples of human rights. Without exception, everybody possesses these rights. The body of international human rights has developed as a result of several treaties and other instruments pertaining to human rights that have been ratified since 1945. At the regional level, additional instruments have been established that represent the unique human rights issues of the region and offer distinctive protection measures. This paper will highlight the major international human rights treaties/conventions and their implementation.

1.1 Introduction

The Universal Declaration of Human Rights (UDHR), which was approved by the UN General Assembly on December 10, 1948, gave the global human rights movement a major boost. The Declaration was drafted with the intention of creating "a common standard of achievement for all peoples and nations." It outlines the fundamental civil, political, economic, social, and cultural rights that every person should be able to enjoy for the first time in human history. It is now universally acknowledged as one of the core principles of human rights, which everyone ought to uphold and defend.¹

Since 1945, a number of international human rights treaties and other agreements have been ratified, giving inherent human rights a legal framework and expanding the sphere of global human rights. At the regional level, additional instruments have been established that provide special methods of protection and reflect the region's unique human rights issues. Additionally,

¹Human Rights Commission, <https://www.humanrightscommission.ky/human-rights-treaties> (last visited on: October 15, 2023)

the majority of States have enacted laws and constitutions that explicitly safeguard fundamental human rights. Other instruments, such as declarations, guidelines, and principles issued at the international level, contribute to the understanding, application, and evolution of international human rights law, even if international treaties and customary law serve as its fundamental sources. The development of the rule of law at the national and international levels is necessary for the respect of human rights.

1.2 Treaty Bodies

A treaty is a legally binding agreement between governments that establishes guidelines for how each state will conduct its business on a given problem. States ratify and agree to treaties individually. Treaty bodies are groups of impartial specialists who oversee how UN human rights treaties are being implemented among signatories. They take into account state reports about the steps taken to implement human rights under the treaties they oversee and they offer official interpretations (sometimes referred to as General Remarks or General Suggestions) regarding the state of states' duties under the treaties. The majority of treaty bodies are also able to examine and offer recommendations on complaints from people and organisations who believe their rights under the treaty have been infringed upon and they have not been given access to a remedy at the national level. The following is a list of major conventions and the monitoring body under each treaty.

Sl. No.	Name of the convention	Date of adoption	Monitoring agency
1.	Universal Declaration of Human Rights	10 Dec 1948	Human Rights Council
1.	ICERD- International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965	Committee on the Elimination of Racial Discrimination
2.	ICCPR- International Covenant on Civil and Political Rights	16 Dec 1966	Human Rights Committee
3.	ICESCR - International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	Committee on Economic, Social and Cultural Rights
4.	CEDAW- Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979	Committee on the Elimination

			of Discrimination against Women
5.	CAT- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984	Committee against Torture
6.	CRC- Convention on the Rights of the Child	20 Nov 1989	Committee on the Rights of the Child
7.	ICMW- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
8.	CPED- International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006	Committee on Enforced Disappearances
9.	CRPD- Convention on the Rights of Persons with Disabilities	13 Dec 2006	Committee on the Rights of Persons with Disabilities

1.3 Role of various agencies under conventions

States are required to abide by the requirements outlined in international human rights legislation. States take on responsibilities and duties under international law to uphold, defend, and fulfil human rights when they ratify international treaties. States have a commitment to protect human rights, which implies they cannot restrict or interfere with their enjoyment. States have a duty to safeguard people and groups from violations of human rights. States have a duty to fulfil, which requires them to take proactive measures to enable the enjoyment of fundamental human rights.² Governments commit to implementing domestic policies and laws that are compliant with their commitments and duties under international human rights treaties when they ratify them. International and regional structures and processes for specific grievances or interactions can be utilised to help guarantee that universal human rights norms are actually respected, put into effect, and executed at the local level in cases where local court processes fall short to remedy violations

² OHCHR, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (last visited on: October 15, 2023)

of human rights. The major list of conventions and state obligation while providing the right to seek remedy is as under:

Sl. No.	Name of the convention	State's duty to report	Action/outcome	Agency to receive complaints
1.	ICERD- International Convention on the Elimination of All Forms of Racial Discrimination	Exists. Once in two years.	report submitted to the General Assembly	Ad hoc Conciliation Commission
2.	ICCPR- International Covenant on Civil and Political Rights	Upon request from agency	Given to States	Human Rights Committee
3.	ICESCR - International Covenant on Economic, Social and Cultural Rights	Exists. Once in five years.	General recommendations	Committee on Economic, Social and Cultural Rights
4.	CEDAW- Convention on the Elimination of All Forms of Discrimination against Women	Exists. Once in four years.	General recommendations	No procedure on hearing complaints
5.	CAT- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Exists. Once in four years.	General recommendations	Committee against Torture
6.	CRC- Convention on the Rights of the Child	Exists. Once in five years.	General recommendations	Committee on the Rights of the Child

7.	ICMW- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Exists. Once in five years.	Provides comments	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
8.	CPED- International Convention for the Protection of All Persons from Enforced Disappearance	No obligation	Only considers reports.	No procedure on hearing complaints
9.	CRPD- Convention on the Rights of Persons with Disabilities	Exists. Once in four years.	Only considers reports.	No procedure on hearing complaints

1.4 Indian response to treaties/conventions

India is a signatory to most of the international conventions and treaties. However, India has ratified a few and is yet to ratify a few conventions related to human rights. The following table provides list of conventions and its status³:

Sl. No.	Name of the convention	Ratification status
1.	ICERD- International Convention on the Elimination of All Forms of Racial Discrimination	India ratified the Convention on 3 December 1968 with certain reservations ⁴
2.	ICCPR- International Covenant on Civil and Political Rights	India acceded to the Convention on 10 April 1979
3.	ICESCR - International Covenant on Economic, Social and Cultural Rights	India acceded to the Convention on 10 April 1979

³ NHRC, https://nhrc.nic.in/sites/default/files/A_Handbook_on_International_HR_Conventions.pdf (last visited on: October 15, 2023)

⁴ It reads: "The Government of India declares that for reference of any dispute to the International Court of Justice for decision in terms of Article 22 of the International Convention on the Elimination of all Forms of Racial Discrimination, the consent of all parties to the dispute is necessary in each individual case."

4.	CEDAW- Convention on the Elimination of All Forms of Discrimination against Women	India signed the Convention on 30 July 1980 and ratified it on 9 July 1993 with certain reservations ⁵
5.	CAT- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	India signed the Convention on 14 October 1997, but has not ratified it yet
6.	CRC- Convention on the Rights of the Child	India acceded to the Convention on 11 December 1992
7.	ICMW- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	India has not signed the Convention
8.	CPED- International Convention for the Protection of All Persons from Enforced Disappearance	India signed the ICPAPED on 6 February 2007, but has not ratified it yet
9.	CRPD- Convention on the Rights of Persons with Disabilities	India ratified the Convention on 1 October 2007

Indian Constitution provides for the respect and implementation of international treaties and agreements. Article 51 states that the state is obligated to upholding just and moral relations with other countries as well as advancing national peace and security on a global scale. The specific Article 253 grants the parliament the authority to enact laws and carry out legislative actions to carry out international agreements. As to Article 253, the parliament holds the exclusive authority to enact legislation for the entirety or any portion of India's territory, with the aim of carrying out international treaties, agreements, or conventions with other nations, as well as decisions taken at conventions or associations. This means that in order to carry out international treaties, accords,

⁵ India's Declarations/Reservations on the CEDAW

Declarations: "i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.

ii) With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy."

Reservation: "With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article."

and conventions, the parliament is empowered by Article 253 to enact legislation on the subjects included in Schedule VII, List II as well.

The implementation status of various conventions is as under⁶:

Sl. No.	Name of the convention	Action/Initiatives
1.	ICERD- International Convention on the Elimination of All Forms of Racial Discrimination	Constitutional provisions especially Part III among other laws.
2.	ICCPR- International Covenant on Civil and Political Rights	Many laws cover the rights under ICCPR such as Right to Information Act, 2000; Domestic Violence Act, Child Marriage Restraint Act, 1929; Prohibition of Child Marriage Act, 2006 among others.
3.	ICESCR - International Covenant on Economic, Social and Cultural Rights	National Rural Employment Guarantee Act; Food Safety and Standard Act; Right to Education Act; Land Acquisition Act; National Food Security Act etc. are some of the laws framed which covers rights under the ICESCR.
4.	CEDAW- Convention on the Elimination of All Forms of Discrimination against Women	Constitutional provisions especially Part III, Maternity Benefit law etc. among other laws
5.	CAT- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	No direct law but part III of Indian Constitution secures against inhuman treatment or other such acts.
6.	CRC- Convention on the Rights of the Child	Child Marriage Restraint Act, 1929; Prohibition of Child Marriage Act, 2006, Right to Education Act etc. are some laws enacted in this regard

⁶ *Supra* Note 3.

7.	ICMW- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	No direct law.
8.	CPED- International Convention for the Protection of All Persons from Enforced Disappearance	No direct law. Criminal Law (amendment) Act 2013, Immoral Traffic (Prevention) Act, 1956 (ITPA) and The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2021 among other laws.
9.	CRPD- Convention on the Rights of Persons with Disabilities	Rights of Persons with Disabilities Act of 2016 among other laws.

1.4.1 Enforcing/protective agency

The Protection of Human Rights Act (PHRA), 1993, with the objectives of “An Act to provide for the constitution of National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto” created the National Human Rights Commission (NHRC) of India on October 12, 1993. Thanks to the authority granted to it by the PHR Act of 1993, the NHRC has made a substantial contribution to the nation's efforts to safeguard and advance human rights. The National Human Rights Commission of India is tasked with studying agreements and other international pacts on human rights to provide proposals for their efficient implementation.⁷

The Commission not only works with the Indian government to ratify and endorse international human rights treaties, but it also examines national legislation to make sure that local laws uphold global standards for human rights and that global instruments are being implemented nationally.⁸

Other duties include⁹:

1. “Enquiring suo motu, or on a petition, into complaints of human rights violations;
2. Intervening in any proceeding involving any allegation of violation of human rights

⁷ Section 12(f) of the Protection of Human Rights Act, 1993 (PHRA).

⁸ Section 12 of the Act

⁹ NHRC, <https://nhrc.nic.in/faqs/what-functions-have-been-assigned-commission-under-act-0> (last visited on: October 15, 2023)

- pending before a court with the approval of such court;
3. Visiting jails or other institutions where persons are detained to study living conditions and make recommendations thereon;
 4. Reviewing the safeguards provided by the Constitution or laws for the protection of human rights and making recommendations for their effective implementation;
 5. Reviewing the factors, including acts of terrorism, that inhibit the enjoyment of human rights, and recommending appropriate remedial measures; and, undertaking such other functions as it may consider necessary for the protection of human rights;
 6. Assessing the functioning of public institutions, ensuring that laws are implemented in practice, and monitoring entitlements, the NHRC monitors situations where very serious violations of human rights have taken place, calling for reports from the Governments concerned, sending its own teams to investigate, framing recommendations, and monitoring compliance.”

1.5 Conclusion

There is no explicit clause in the Constitution that gives the Supreme Court and High Courts the authority to uphold international treaty rights against the government, in contrast to Articles 32 and 226 which provide them the authority to enforce the fundamental rights protected by the Constitution. Article 51(c) of the Constitution, which requires the State to promote respect for international law and treaty responsibilities, is the sole clause that addresses the State's duties under international treaties. A significant overhaul of the NHRC is necessary to make it a more potent monitor of violations of human rights throughout the country. The legal bindingness of the commission's findings will increase the NHRC's efficacy. If India's human rights status is to be enhanced and bettered state and non-state actors need to work together and take the initiative. These concerns need to be addressed in order to improve the effectiveness of the implementation of human rights provided under various laws and conventions.

References:

1. Human Rights Commission, <https://www.humanrightscommission.ky/human-rights-treaties> (last visited on: October 15, 2023)
2. OHCHR, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> (last visited on: October 15, 2023)

3. NHRC,

https://nhrc.nic.in/sites/default/files/A_Handbook_on_International_HR_Conventions.pdf (last visited on: October 15, 2023)

4. NHRC, <https://nhrc.nic.in/faqs/what-functions-have-been-assigned-commission-under-act-0> (last visited on: October 15, 2023)

