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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, 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

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Assistant professor of Law

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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.

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ROLE OF CERD IN THE HUMAN RIGHTS VIOLATIONS IN TIBET

Authored by - Nived K M, Student,
Tamil Nadu National Law University
Ninth Semester, B.A L.L.B (Hons.)
Gmail - nivedkm2000@gmail.com
Mobile Number - 9961185293

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Abstract

For decades the International Convention on the Elimination of all forms of Racial Discrimination led by the Committee on the Elimination of Racial Discrimination has taken up the mantle in protecting the rights of racial and ethnic minorities in tandem with the other treaty body mechanism. Unfortunately, the treaty body has failed in achieving the same degree of protections being extended to the Tibetan people despite the guarantees in the ICERD. This research work will analyse the brief history of the Sino-Tibetan relations, the obligations under the ICERD, mechanisms under CERD and how the entire system is failing to alleviate the situation in Tibet. Following this, the research work will provide recommendations to the existing CERD system and measures to improve the current treaty body mechanism.

Introduction

The International Convention on the Elimination of all forms of Racial Discrimination is one of the foremost international treaties that seek to ensure the implementation of basic and fundamental human rights among the members who had ratified it. The CERD committee attempts its utmost to ensure that it is implemented by states who have ratified it.

The People's Republic of China has been one of the most critical players in the international arena for the past few decades. The role in the global world order took an upswing during the Presidency of Richard Nixon and in the aftermath of the Sino-Soviet Split. Criticised as one of the harshest and most oppressive authoritarian states in the modern era there had always been regular allegations of human rights violations being done in China. Tibet is one such region where the oppressive nature of the Chinese state is enforced in full force.

In the aftermath of the unprecedented third term Xi Jinping has secured and with the position of the CCP intensifying when it comes to Tibet, the matter becomes altogether more important. We once again look at the terrible tragedy that has befallen these innocent people. The ICERD outlined the plethora of rights and protections all human beings are entitled to regardless of their race. However, the Chinese state has not undertaken any concrete measures for the same. In this research project, we will be analysing the ICERD, its existing protections on human rights granted towards minority groups, the treaty body structure of the ICERD and how the ICERD could ensure better rights being achieved for the people in Tibet.

Statement of Problem

The statement of the problem is as follows

The CERD has been instituted to ensure that the nations that ratify the ICERD fulfil their obligations. However this project will showcase the failure of the CERD in its actions pertaining towards the human rights violations done in Tibet by the People's Republic of China. The work will also throw light regarding the reaction and conduct of the CERD towards these violations and would prescribe possible measures to improve the CERD.

Research Questions

The research questions of this work are as follows

- What was the relationship between the Tibetan state and the various Chinese dynasties throughout history?
- What are the protection measures set by the ICERD and CERD when it comes to the protection of human rights and the fulfilment of human rights obligations?
- What are the various human rights violations committed by China in Tibet under ICERD?
- What are the various measures taken by the CERD to ensure the protection of human rights in Tibet?
- What are the inadequacies of the Current Treaty Body Regime when it comes to the protection of human rights in Tibet?

A Brief History of China and Tibet

Human habitation in the Tibetan Plateau began approximately 5000 years ago with the existence of ruins near the Chamdo region. The references from the Tang dynasty place that the reign of modern Tibet was occupied by nomadic herdsmen and the pastoral Qiang tribes.¹ For centuries these groups and tribes inter-married and lived in relative harmony becoming the ancestors to modern Tibetans, a distinct and separate racial grouping from the Chinese Han ethnicity. These tribal units and pastoral herdsmen soon unified under minor principalities and kingdoms, culturally unified but politically divided.

¹ Victor C. Falkenheim, "Tibet", *Encyclopedia Britannica*, available at <https://www.britannica.com/place/Tibet> (last visited on November 29, 2022).

During the waning centuries of the BCE and early centuries of the CE, countless kingdoms rose into prominence over the region with the most famous being the Bod and Shangshung.² True Tibetan statehood would be achieved when Namri Songsten united these kingdoms and became the first king of Tibet in 602 CE ushering in the Imperial age which would be continued until the year 842 CE.³ In the imperial era of Tibetan history, they were one of the foremost powers in central Asia. It was said that they were so powerful militarily and politically that in 762 CE, they defeated China, seized the capital Chang'an and installed a new puppet Emperor.⁴ Their several military victories led to the first China-Tibet Peace Treaty of 821 CE wherein China recognised Tibet as an independent nation with its own inviolable sovereignty and territory.⁵

The Mongol era saw the fall of Tibet from a sovereign state to a client state and a vassal. The difference was unlike the Chinese whose empire was made into provinces of the Mongol Empire, Tibet remained a vassal where a Mongol official would be appointed to oversee relations in a form of a feudalistic relationship.⁶ This was also the time that Kublai Khan gave full sovereignty over the three provinces of Tibet which we can see as the next phase in Tibetan statehood.⁷ Furthermore, between the 1600s and the 1700s, Tibet was constantly involved in the internal power struggles of the Chinese state as well as the Mongol tribes in the vicinity.⁸

Both the Ming and Manchu eras saw a revival of Tibetan Statehood. During the Yuan collapse and the rise of the Ming, for about a hundred years, the Tibetans existed as an independent sovereign state in central Asia.⁹ Even during the Manchu period, while China repeatedly tried to annex the nation, the Tibetans recognized only their central administration in Lhasa as the legitimate governor in the region.¹⁰ At best what one can gather is that in times of a weakening in Tibetan power and a corresponding rise in Chinese authority, the Tibetan

² "Glimpses on History of Tibet", *Central Tibetan Administration*, available at <https://tibet.net/about-tibet/glimpses-on-history-of-tibet/> (last visited on November 29, 2022).

³ "Timelines of Tibet's History", *Free Tibet*, available at <https://freetibet.org/freedom-for-tibet/history-of-tibet/tibets-history-timelines/> (last visited on November 29, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ "Tibet: Disunity, 9th to 14th Century", *Encyclopedia Britannica*, available at <https://www.britannica.com/place/Tibet/Disunity-9th-to-14th-century> (last visited on November 29, 2022).

⁷ *Supra* note 2.

⁸ "Tibet profile - Timeline", *BBC*, November 13, 2014, available at <https://www.bbc.com/news/world-asia-pacific-17046222> (last visited on November 29, 2022).

⁹ *Supra* note 6.

¹⁰ *Supra* note 2.

state will devolve into a vassal of China but never a directly administered province or territory. This can be highlighted by the Fifth Dalai Lama establishing Tibet as an independent state, the invasion of 1725 which made Tibet a tributary state and the weakening of Chinese influence in the 1750s onwards with the Manchus declining.

In the early 1900s, the Manchu state had been in terminal decline and soon to be overthrown. They attempted one last annexation plan of the Tibetan state but failed spectacularly only heralding decades of Tibetan enmity and the resurgence of Tibetan independence until the 1950s.¹¹ between 1911 and the rise of the Chinese Communist Party, Tibet had no foreign influence plaguing its government, functioned as a sovereign state and was by all accounts, a fully independent state.¹² We can clearly see that throughout its history, Tibet had never become a territory of the Chinese dynasties in any time throughout its history and was always on the scale between either a tributary state or an independent nation.¹³

The situation escalated dramatically when in 1949, the People's Liberation Army of the new People's Republic of China, without provocation, invaded Eastern Tibet and occupied Chamdu.¹⁴ Following the invasion, the Chinese state issued what is called as the "17-Point Agreement for the Peaceful Liberation of Tibet" to the Tibetan government in May 1951. The delusion calls for the forcible annexation of Tibet with China, total compliance by the Tibetan authorities, reorganisation of the Tibetan military, creation of a social and cultural policy in line with the diktats from the CCP.¹⁵

Under duress the Tibetan administration was forced to sign an assent to this imposition. Its aftermath saw the repression of the resistance movement in eastern Tibet with destruction of religious buildings and the imprisonment of monks and other community leaders.¹⁶ This war is not the end of the Chinese atrocities. On the 9th of September 1951 thousands of Chinese troops marched into Lhasa. The forcible occupation of Tibet was marked by systematic

¹¹ "Tibet since 1900", *Britannica*, available at <https://www.britannica.com/place/Tibet/Tibet-since-1900> (last visited on November 29, 2022).

¹² "Learn a Little About Tibet", *Britannica*, available at <https://www.umass.edu/rso/fretibet/education.html> (last visited on November 29, 2022).

¹³ "The 17-point Agreement – What China promised, what it really delivered and the future?", *Central Tibetan Administration*, May 23, 2019, available at <https://tibet.net/the-17-point-agreement-what-china-promised-what-it-really-delivered-and-the-future-2/> (last visited on November 29, 2022).

¹⁴ *Supra* note 2.

¹⁵ The Agreement on Measures for the Peaceful Liberation of Tibet, 1951, art. 2, 7, 8, 15.

¹⁶ "Learn a Little About Tibet", *Official Students for a Free Tibet Website*, available at <https://www.umass.edu/rso/fretibet/education.html> (last visited on November 29, 2022).

destruction of monasteries, the suppression of religion, denial of political freedom, widespread arrest and imprisonment and massacre of innocent men, women and children. By 1951 the state of Tibet, a nation that had existed for centuries and the homeland of millions ceased to exist and its people were forced under a despotic regime beginning an era of terror that has never abated. Despite the existence of treaty body mechanisms such as those provided by the ICERD and the existence of the CERD, the situation of the indigenous people in Tibet continues to deteriorate.

ICERD

Article 1 of the convention defines racial discrimination as

“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.”¹⁷

The International Convention on the Elimination of Racial Discrimination (ICERD) is an international treaty that strives to eliminate all forms of racial discrimination between individuals and to promote a degree of understanding among people. ICERD was adopted in 1965 and came into force in the year 1969. China ratified the International Convention on the Elimination of Racial Discrimination on the 29th of December, 1981.

Under the ICERD Regime, all states who are states and thus considered as State Parties are under an obligation to create, produce and submit reports to the CERD which clearly demarcate and outline the legislative, judicial and policy measures taken by the party in question with the intention to fulfil its obligations under the treaty. Every state party is under the obligation to submit a report one year after consenting to the ICERD and its ratification following which they should submit similar reports every two years.¹⁸

Obligations and duties of the state parties are usually enforced through the following few methods

¹⁷ International Convention on the Elimination of Racial Discrimination, 1969, art. 1.

¹⁸ *Id.*

● State Reporting

All state parties are required and obligated to submit a report within one year of ratifying ICERD. We have also discussed that they should submit similar reports every two years as well.¹⁹ Following this report being submitted, the CERD will assess the situation, conduct dialogue with the party regarding the situation of human rights and issue recommendations through its Concluding Observations. After this, the CERD does not leave the party alone but would rather further check to request updates from the state party and may even appoint a coordinator to work in cooperation with the nation's rapporteurs in order to provide CERD with proper up-to-date reports.²⁰

● Individual Reporting

In addition to the system of state reporting, the CERD will also accept individual reports or complaints from citizens of a nation about a developing and possible CERD violation in that nation. This is set under article 14 of ICERD. However the drawback is that the state party must itself recognise the competence of the individual who is appearing before CERD.²¹ If no such declaration of competency is made by the state party in question, then CERD will not consider the complaint so made.

● Inter-State Complaints

Article 11 of the ICERD calls for the power of Inter-State Complaints. Suppose a nation X is concerned with the developing human right situation in nation Y, especially with regard to racial discrimination or the violation of any of the other obligations under ICERD, then the nation X has the power to call into question the situation in nation Y before CERD. This can initiate a response from nation Y and if that response does not satisfy nation X, then the cycle can repeat itself until the negotiations provide a proper result. If arbitration does not prove successful, one of the parties can reach out to the International Court of Justice and request a ruling from them.²²

¹⁹ *Id.*

²⁰ "Committee on the Elimination of Racial Discrimination", *International Justice Resource Center*, available at <https://ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-racial-discrimination/> (last visited on November 29, 2022).

²¹ International Convention on the Elimination of Racial Discrimination, 1969, art. 14.

²² *Id.*

● Urgent Interventions

We had briefly noted earlier that CERD has in its arsenal the power to start early-warning procedures. These are done to prevent any further escalation of an existing situation of human rights violations under ICERD. However this cannot be used for every single matter in an arbitrary manner. Some situations which necessitate this measure are

1. the lack of an adequate basis for defining and prohibiting racial discrimination in domestic legislation
2. inadequate enforcement mechanisms
3. an emerging pattern of racial propaganda or appeals to racial intolerance made by other individuals.²³

Once the CERD decides to undertake an early-warning procedure or an urgent procedure, the Committee may make requests to the state party involved to provide information, request the Secretariat to collect information from the field offices of relevant organisations, and adopt a decision that addresses specific concerns and recommends action.

State Parties and their obligations under CERD

Under the ICERD Regime, all states who are states and thus considered as State Parties are under an obligation to create, produce and submit reports to the CERD which clearly demarcate and outline the legislative, judicial and policy measures taken by the party in question with the intention to fulfil its obligations under the treaty. When a state becomes a party to the treaty, they must undertake a declaration that racial discrimination should be outlawed and that they pledge to abide within the boundaries set by the Convention.²⁴

The CERD comes into focus here. The CERD is set up as an international Committee of experts appointed and chosen to oversee the compliance of member states who had ratified ICERD. As per article 8, CERD shall consist of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals.²⁵ Members are elected for about 4 years and half will retire every 2 years. This is done so that there is a

²³ *Id.*

²⁴ Gay McDougall, "International Convention on the Elimination of All Forms of Racial Discrimination", *Audiovisual Library of International Law*, December 21, 1965, available at <https://legal.un.org/avl/ha/cerd/cerd.html> (last visited on November 29, 2022).

²⁵ International Convention on the Elimination of Racial Discrimination, 1969, art. 8

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balance between the CERD composition and its continuity.²⁶

As per article 9, all state parties must submit written reports to the CERD which would entail all necessary information pertaining towards their progress in the implementation of ICERD.²⁷ CERD also receives reports provided by United Nations agencies, national institutes of human rights, and international and domestic NGOs which provides additional perspectives regarding the situation of human rights in a nation.²⁸ based on a compilation of all these reports, the CERD can get a basic idea of how human rights are protected and whether racial discrimination is curtailed by the government in question. Following this, the CERD will set out a list of possible solutions and recommendations to the nation to implement so that the ideal situation could be reached. Each state party who has assented and ratified the ICERD must present this report.²⁹ Furthermore, under its Early Warning and Urgent Action Procedure, CERD is also authorised to address governments concerning matters brought to its attention that are of an urgent nature.³⁰

The articles 11, 12 and 13 provide the viable jurisdiction to the CERD and allows this treaty body to consider Communications given by one state party against another state party and allows the CERD to take up appropriate action.³¹ As per General Comment 25, CERD has approved the recommendation that their definition of protections towards individuals and groups would be interpreted in a broad manner linking even those who are not explicitly named.³² As per General Comment 23, this would extend to blanket protection towards 'indigenous communities' in every state party who has ratified.³³

Their protections are further elucidated under article 5 of the ICERD which expands the same towards right to equality and equal treatment, protection against bodily harm or violence,

²⁶Committee on the Elimination of Racial Discrimination, available at <https://ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-racial-discrimination/> (last visited on November 29, 2022).

²⁷International Convention on the Elimination of Racial Discrimination, 1969, art. 9

²⁸ *Id.*

²⁹ "The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)", *Australian Human Rights Commission*, available at <https://humanrights.gov.au/our-work/race-discrimination/international-convention-elimination-all-forms-racial-discrimination> (last visited on November 29, 2022).

³⁰ *Id.*

³¹ International Convention on the Elimination of Racial Discrimination, 1969, art. 11, 12, 13.

³² UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXV. On Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, CERD/C/GC/25, UN Doc A/52/18 (September 26, 1997).

³³ UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII, Rights of Indigenous People*, UN Doc A/52/18 (March 20, 2000)

civil rights, freedom of movement, thought, opinion, assembly, social and cultural rights, employment, equal participation in cultural activities, equal access to services and so on.³⁴

The onus to ensure that these rights and protections are guaranteed is placed on the state party in question which has to ensure these are upheld in their jurisdictions through prompt investigation, fair trials and tribunals, equal access to justice and proper prosecution.³⁵

Further, article 2 (1) (c) requires States to nullify any law or practice which perpetuates racial discrimination.³⁶ CERD has enunciated in General Recommendation 14 that when it comes to the determinants of whether an action or law by a state is violative of ICERD, the law or action in question must have an unjustifiable and disproportionate adverse effect on a group of people who are so facing this situation due to their race, descent, colour, national or ethnic origin.³⁷

States who have ratified the ICERD are obligated to follow through on their treaty body obligations. The ratification ensures that the treaty is now binding to the state. As such, since China ratified the treaty in 1981, the obligations that so arise from article 5 and 6 are now binding on the Chinese state. This would extend to the right to equality and equal treatment, protection against bodily harm or violence, civil rights, freedom of movement, thought, opinion, assembly, social and cultural rights, employment, equal participation in cultural activities, equal access to services and so on.³⁸ Under article 6, the onus to ensure that these rights and protections are guaranteed is placed on China who must ensure that these rights are upheld in their jurisdictions through prompt investigation, fair trials and tribunals, equal access to justice and proper prosecution.³⁹

No state is supposed to sponsor, protect or even support any action of racial discrimination in any way and states must act in such a manner that any and all laws in their jurisdictions that perpetuate racial discrimination either directly or indirectly are repudiated. Adding to this, states are required to take up concrete measures for achieving the goals of the CERD and its recommendations and not merely providing assurances.⁴⁰

³⁴ *Id.*, art. 5.

³⁵ *Id.*, art. 6.

³⁶ *Id.*, art. 2(1)(c).

³⁷ UN Committee on the Elimination of Racial Discrimination, *General recommendation XIV on article 1, paragraph 1, of the Convention*, UN Doc A/48/18 (September 15, 1993).

³⁸ International Convention on the Elimination of Racial Discrimination, 1969, art. 6.

³⁹ *Id.*

⁴⁰ *Supra* note 24.

As per article 2 (2) of the ICERD, all state parties are mandated under the treaty body to take up special measures to eliminate any de jure, de facto and substantial discrimination. Adding on to this, in the process of eliminating possible discrimination, the state must assess the historical context of suffering these people have faced and develop programs to alleviate their situation. ‘CERD through its General Recommendation 32 even called for the state parties to desegregate their data collection in such a manner that the data should measure the socio-economic and cultural status of various groups and their participation in the political and economic development of the country in question.’⁴¹

Critical analysis of the success of ICERD and CERD in China

We have briefly discussed the protections instituted by the ICERD and the role both the state party as well as the CERD must play in its enforcement. In this section we will briefly look into the current situation in Tibet and hold it against what the CERD has done and its impact. First and foremost, before we move to the violations done by the Chinese state, we must realise that the People’s Republic of China had ratified the ICERD and are thus bound by the obligations of the treaty body. Additionally, As per General Comment 25, CERD has approved the recommendation that their definition of protections towards individuals and groups would be interpreted in a broad manner linking even those who are not explicitly named.⁴² As per General Comment 23, this would extend to blanket protection towards ‘indigenous communities’ in every state party who has ratified.⁴³ This will thus mean that Tibetans being an indigenous minority in China who are from the Tibetan Plateau are protected under ICERD. Merely because they are not explicitly mentioned does not repudiate any protection that they are entitled.

Currently we will briefly discuss the CERD violations happening in Tibet.

⁴¹UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXXII. The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, CERD/C/GC/32 (September 24, 2009).

⁴²UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXV. On Article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, CERD/C/GC/25, UN Doc A/52/18 (September 26, 1997).

⁴³UN Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII, Rights of Indigenous People*, UN Doc A/52/18 (March 20, 2000)

● ICERD Violations in Tibet

Starting from 1959 itself, most Tibetan have found their right to freedom of expression be curtailed the moment the chinese regime overthrow the Dalai Lama and his peaceful cabinet. A popular uprising inn1959 saw around 87000 Tibetan executed and widespread persecution of Tibetans on their culture and religion with their religious structures were all torn down.⁴⁴

1. Economic and Political Situation

China boasts of huge investment in Tibet but its economic development is primarily intended to cement its hold on Tibet and enhance its ability to exploit Tibet's natural resources. While some argue that economic development has improved conditions for some Tibetans, the reality is that the system and infrastructure built in the region overwhelmingly favours Chinese migrants, continuing to disadvantage Tibetans economically.⁴⁵ This exclusion is not slowly spreading to political institutions as well which is a direct violation of article 5 (c) of the ICERD.⁴⁶ Thousands of Tibetan people are arrested on a yearly basis for each and every protest with 4000 being estimated as a major indicator as per Amnesty International.⁴⁷ Adding to this, as per Human Rights Watch, many of the community leaders of the Tibetan people are being detained without charges for an exorbitant long period of time simply because they were Tibetan.⁴⁸

Attitude towards Tibet further intensified in the aftermath of the Tiananmen Square incident and the brutal methods China employed to suppress dissent.⁴⁹ As per the recent Freedom House Report of 2021, there are also many instances where Tibetan people are terminated from their employment due to their ethnicity.⁵⁰ The Chinese state has forcibly caused disruption towards the employment of the Tibetan people purely on the basis of their race and religion. All these are evidence of direct violations of article 5 (e)(1) of the ICERD.

⁴⁴ "Learn a Little About Tibet", *Official Students for a Free Tibet Website*, available at <https://www.umass.edu/rso/fretibet/education.html> (last visited on November 29, 2022).

⁴⁵ *Supra* note 3.

⁴⁶ International Convention on the Elimination of Racial Discrimination, 1969, art. 5(c).

⁴⁷ Amnesty International, *People's Republic of China -Tibet Autonomous Region: A year of escalating human rights violations 1-5* (2009).

⁴⁸ "Relentless Detention and Prosecution of Tibetans under China's "Stability Maintenance" Campaign", *Human Rights Watch*, available at <https://www.hrw.org/report/2016/05/22/relentless/detention-and-prosecution-Tibetans-under-chinas-stability-maintenance> (last visited on November 29, 2022).

⁴⁹ Philip Baker, "Human Rights, Europe and the People's Republic of China" 169 *The China Quarterly* 45-63 (2002)

⁵⁰ "China: Freedom in the World 2021 Country Report", *Freedom House*, available at <https://freedomhouse.org/country/china/freedom-world/2021> (last visited on November 26, 2022).

The forced moment or the restriction of their movement beyond Tibet had also been recorded by CERD in their Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China).⁵¹

This is because they have forced millions of Tibetan nomads to leave pastures, sell their livestock and forcibly be deported to the cities without consent, proper remuneration or without any prospect of future employment.⁵² The lack of proper civilian infrastructure and the brutal Chinese restrictions have created a situation where the indigenous people are totally dependent on China. Some reports show the horrors in Tibet where decades of government discrimination have led to widespread poverty and oppression with scarcity of food compelled Tibetans to feed on grass and other inedible material to get sustenance. Only about 5% of the Tibetan population survived around 1958.⁵³ This is not only problematic towards the employment opportunities of the Tibetans but is also a violation of article 5 (d) (i), the right to reside within the border of the state.⁵⁴

2. Education and Schooling

When it comes to matters of education and schooling, here also there is discrimination. Education is primarily taught in the Chinese language. This is a major cause of disadvantage for the Tibetans who can only learn their mother tongue as a second language in their own land.⁵⁵ This had even been attested by CERD in their report in 2018.⁵⁶ Language is a part of the culture of a nation. The restriction of language or vernacular education is a restriction on the people from properly accessing their culture. This restriction however as we can see is imposed on the Tibetan people purely because they are of the Tibetan ethnicity and race. This is a violation of article 5 (e) (vi) of the ICERD.

⁵¹ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)*, CERD/C/CHN/CO/14-17 8 (August 30, 2018).

⁵² "Land and Environment", *Free Tibet*, available at <https://freetibet.org/freedom-for-tibet/land-and-environment/> (last visited on November 29, 2022).

⁵³ Neha Pande, "Documentaries on Tibet and Human Rights Violations: A Study" 6 *Journal of Content, Community & Communication* 85-91 (2017).

⁵⁴ Enze Han and Christopher Paik, "Dynamics of Political Resistance in Tibet: Religious Repression and Controversies of Demographic Change" 217 *The China Quarterly* 69-98 (2014).

⁵⁵ "China's Lies", *Free Tibet*, available at <https://freetibet.org/freedom-for-tibet/occupation-of-tibet/chinas-lies/> (last visited on November 29, 2022).

⁵⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)*, CERD/C/CHN/CO/14-17 8 (August 30, 2018).

Chinese lessons also showcase a lie that Tibet was a barbarian land before China and the CCP stepped in to civilise the nation.⁵⁷ This dissemination of false history is done to ensure that the Tibetan never realise their true culture nor will they ever feel as if not practising is a violation of their rights under ICERD. Adding on to this, Freedom House reports in 2021 that in many cases, Tibetan children are not given adequate education facilities. In many cases, the Chinese school authorities are utilising harassment and coercion methods to pressure Tibetan parents into allowing the indoctrination of their children and this is combined with the expulsion of those who do not comply.⁵⁸

3. Government Intervention on Health

Adding to the situation of government restrictions on movement, expression, education and employment, this is also forced government intervention in the health of the individual which is also leaving it possible bodily harm. This is the forced sterilisation policies of the government on the Tibetan people simply due to their race.⁵⁹ This also leads to a chance of bodily harm towards the individual. Worst of all, this instance or situation of possible bodily harm is due to the government discrimination of the Tibetans based on their race.

4. Religious Freedom

Under Article 18 of the ICCPR, all states are to provide a minimum standard of religious freedom for all persons. While China did assent to ICCPR, they did not ratify it. The ICCPR states that the right to freedom of religion includes the right to adopt any faith and to practise it without government intervention.⁶⁰ As per the UNGA Resolution 36/35 This further steps up to the right to congregate, establish places of worship, write and speak religious messaging, publish relevant theological documents, set up religious institutions and train and allow the continuation of one's faith along with the observance of religious holidays or days of worship.⁶¹ ICERD further stipulates that there must be protection under article 5 (d) (vii) that there is a right to faith and religion which must not be refused to people on the basis of their race.

⁵⁷ Sudeep Basu, "Interrogating Tibetan Exilic Culture Issues and Concerns" 61 *Sociological Bulletin*, 232-254 (2012).

⁵⁸ "China: Freedom in the World 2021 Country Report", *Freedom House*, available at <https://freedomhouse.org/country/china/freedom-world/2021> (last visited on November 26, 2022).

⁵⁹ *Id.*

⁶⁰ International Convention on the Elimination of Racial Discrimination, 1966, art. 18.

⁶¹ United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief G.A. res. 36/55, 36 U.N. GAOR Supp (No. 51) at 171, U.N. Doc A/36/684 (1981).

However the US State Department had reported that China is currently trying to interfere in the training of religious leaders and the monks, interfering on what is theology and religious in the eyes of the Tibetan and is also setting up restrictions on how the religion can be practised.⁶² During the cultural revolution, the Tibetan monastic population was eliminated by 93 percent over a long period of indiscriminate killing. The religious institutions of the Tibetan people were destroyed with 6000 monasteries being demolished which constitutes around 90 percent of all the monasteries in Tibet.⁶³ Draconian rules still exist today about how the laws in China do not allow the Tibetan to venerate their faith freely simply on account of their ethnicity as Tibetans. In the Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macau, China), CERD found that there is a great amount of criminalization of peaceful religious expression in Tibet.⁶⁴ The racism and rampant discrimination is so bad that since March 2011, more than 150 people have set themselves on fire inside Tibet in protest against China's repression with 2 confirmed this year.⁶⁵

● CERD measures to alleviate Tibetan Situation

In the aftermath of such blatant violations, some going back decades, it is imperative that CERD take adequate action on the matter and thoroughly investigate the same. In the Report of the Committee on Elimination of Racial Discrimination, in its Concluding Observations in 1991, the CERD held that there is a degree of discrimination in the region with how Tibetans are treated when compared to Chinese in the region. The report specifically pointed out the matters of employment, education, restriction on freedom of movement and opinion and so on.⁶⁶ The CERD has asked the state to look into the matter, formulate policies that prevent discrimination on any grounds that have been stated earlier and strive to remove the discrimination.

⁶² China's disregard for Human Rights, *US Department of State*, available at <https://2017-2021.state.gov/chinas-disregard-for-human-rights/index.html#SevereRestrictionsonFreedomsinTibet> (last visited on November 26, 2022).

⁶³ Peter Dziedzic, "Religion Under Fire: A Report and Policy Paper on Religious Freedom in Tibet" 38 *The Tibet Journal* 87-113 (2013).

⁶⁴ Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourteenth to seventeenth periodic reports of China (including Hong Kong, China and Macao, China)*, CERD/C/CHN/CO/14-17 7 (August 30, 2018).

⁶⁵ "Self-Immolation Protests - Tibetan Resistance", *Free Tibet*, available at <https://freetibet.org/freedom-for-tibet/Tibetan-resistance/self-immolation-protests/> (last visited on November 26, 2022).

⁶⁶ Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination on State Parties*, 33, A/45/18 (January 30, 1991)

Following this, in 1996, in the Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD stated that there is a great deal of concern towards how minorities especially ethnic minorities are treated in China such as the Tibetans. The concern was mostly expressed towards matters such as culture and religious freedom.⁶⁷ This report also expressed its concerns that the history, culture and language of the minority groups such as the Tibetans are not being taught adequately enough and that they are being sidelined.⁶⁸

In a subsequent follow up report, CERD expressed concern regarding the 're education' camp where all instances of torture and violence have been perpetuated. The CERD recommended that

*“application of administrative detention and “reeducation through labour” is used restrictively and subject to full judicial control in line with international human rights standards”*⁶⁹

However despite these reports the Chinese state is completely adverse towards any form of change. Despite the recommendations by the CERD, the Chinese state refuses to make any changes. These are ranging in concluding observation from the 1990s till these recent follow ups. What is unfortunate is that throughout its long history, CERD has not done much for the Tibetan people. In fact, ever since China ratified ICERD, over the past 40 years, only 3 Concluding Observations and 2 follow ups have ever been issued in which Tibet was mentioned. In almost all instances and cases, the recommendation by any and all treaty bodies were rejected by the Chinese state whose assets that's human rights are respected in the contested regions.⁷⁰

There has not even been any emergency interventions done by the CERD despite the Chinese state fulfilling 2 of the situations under the measure, ie, inadequate enforcement mechanisms of the ICERD and an emerging pattern of racial propaganda. In fact the situation is so

⁶⁷ Committee on the Elimination of Racial Discrimination, *Concluding observations of the Committee on the Elimination of Racial Discrimination People's Republic of China*, 3 CERD/C/304/Add.15 (September 27 1996)

⁶⁸ *Id.*

⁶⁹ Committee on the Elimination of Racial Discrimination, *Information received from the Government of the People's Republic of China, including the Hong Kong Special Administrative Region, on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination*, CERD/C/CHN/CO/10-13/Add.1 3 (January 24, 2011)

⁷⁰ Björn Ahl, "The Rise of China and International Human Rights Law" 37 *Human Rights Quarterly* 637-661 (2015)

deplorable that it is no longer an emerging situation but rather an established situation of racial propaganda. This is pertaining to the false history of Tibet and the schools teaching that Tibetans are barbarians before the Chinese invasion.

Recommendations

To improve the current CERD system, what we need to do is to revamp the entire treaty body system present today. The issue is that ICERD on paper provides a stable framework for protection of rights of all racial minorities. The problem emerges due to the lack of implementation from the side of the nations. Comparing that with the lack of enforcement mechanism, this is not particularly theoretical. Philosophical issue or any problem with the principles but rather a structural issue. There are inherent structural issues in the CERD that prevent the total implementation of the rights it enshrines. Thus if changes are to be made, there must be recommendations for the overhaul of the CERD structure. The following are the possible recommendations done for the same.

- **Ad hoc committee**

Some of the main concerns with the entire Treaty Body system is that in most cases, there is a structural defect. In this current system of the nine important treaty bodies, there is a great backlog of reports.⁷¹ As the years go by, the number of complaints that come in the backlog increases. This leads to a situation of total inefficiency and delay in the entire structure. For instance, in this Tibetan case, concluding remarks in the 1990s only had a follow up in the 2010s. This is a definition of total backlog and delay in the treaty body system. This must change. The system must be revamped in such a manner that the issues are dealt with faster. The best way would be to delegate the duties to a lesser ad hoc committee chosen for this specific purpose. The members of these ad hoc committees can be up to 5 members with 2 being appointed by the CERD itself and the other 2 by each of the contesting parties. The head of the committee of 5 would be a member of the CERD. Since the CERD has around eighteen members, half could sit as heads of ad hoc committees which will look into matters off petitions presented before them. The ad hoc committees are set to ensure the rapid dealing of the reports and the matters of grave interest. They will handle all the cases that come before them pertaining to petitions.

⁷¹ Geneva Academy of International Humanitarian Law and Human Rights, *Fundamental challenges of the UN human rights treaty body system*, available at <https://www.geneva-academy.ch/joomlatools-files/docman-files/Research%20documents/Background%20Paper%20English.pdf> (last visited on November 26, 2022).

- **Lack of support from UN Bodies**

While the treaty body system that we follow today owes a great deal of its legitimacy towards the UN and the consent of the nations ratifying it, the fact is that there is a total lack of support from the UN regarding the implementation of the recommendations of these bodies.⁷²

Take CERD for instance and its recommendations towards China about Tibet. The UN did nothing when it came to the implementation of these recommendations. With the CERD primarily a consent based model with more power to the state party and the entire obligation of their being implemented only at the magnanimity of the state, China refused and everything was for naught. If the treaty body system needs a long term sustenance, it requires more support from the other UN bodies, especially the General Assembly and the Security Council in passing resolutions backing the CERD.

- **Lack of an Enforcement Mechanism**

The fundamental problem of treaty bodies is that they are based primarily upon dialogue, cooperation and the willingness of the state party in the implementation of its obligations. This is something that jeopardises the long term sustainability of the treaty body. States are far less willing to engage with protection activities because they impact upon the immediate situation within a country. And a key weakness of UN human rights bodies is that, while they are set up for dialogue and engagement, they lack the teeth to effectively protect rights where a state is not willing to cooperate.⁷³ if a state party refuses to cooperate, there is nothing any of these treaty bodies can do to effectively ensure its implementation. Thus the core requirement would be the institution of an enforcement mechanism.

This is where the ad hoc committee can also come into focus. The ad hoc committees are set to ensure the rapid dealing of the reports and the matters of grave interest. They will handle all the cases that come before them pertaining to petitions. Of the remaining 9 experts, a few can be instituted in what would become an internal judicial system akin to the ICJ. This system would have two layers of court system in it.

The lower rung will be filled with 6 courts which will handle arbitration matters and state party violations. These violations will come to the judicial system only if the ad hoc

⁷² *Id.*

⁷³ Rosa Freedman, "Failing To Protect: Systemic weaknesses within the UN human rights machinery", *Universal Rights Group Geneva*, July 7, 2014, available at <https://www.universal-rights.org/blog/failing-to-protect-systemic-weaknesses-within-the-un-human-rights-machinery/> (last visited on November 26, 2022).

committee is unable to solve the matter. The lower rung of judges will be chosen by the CERD itself. No national interest or partisan attitude is permitted and as such no nation is allowed to play any role in the appointment of these judges. Once a verdict is rendered, there is a possibility of appeal to the next level. This would be the final court of appeal. This would be a court of 3 members of the CERD chosen from the 9 who are not appointed to head ad hoc committees. These 3 will decide on the case and render a binding judgement.

The nation will have to follow the verdict else there will be consequences. The consequences for the violation of the verdict of the court or the non implementation of the CERD recommendation would be the declaration of the perpetrators as human rights violators who are bound to be arrested under law the moment they enter into a state party of the treaty body. In the ICTY judgments, especially those of Krstić, Mucić et al and Kunarac et al, those held responsible were the leaders who were in charge of the camps, leaders of the military and the highest officer present.⁷⁴ thus, the main perpetrators will be those commanders and camp heads who undertook or authorised the human rights violations. The perpetrators will be given a chance to present their case before the full 18 member body of CERD once following which a decision will be made on their culpability.

The goal of the current global community is to reach such a situation that the rights of man cannot be silenced by any individual or state. The global community should strive to reach the level of understanding where every perpetrator no matter his rank may be held responsible for the crime they oversee. That is the future one must work for.

Conclusion

In conclusion, we must realise that the treaty body system of the modern era is a very fragile state of global order. They are heavily dependent on the individual nations and their role in its implementations. The moment the state party pulls out, the entire process comes crashing. This is what happened with China. What one can do is ensure that the system in place is effective and that the system is ready to handle violations expediently. Until then, this would remain a toothless tiger and only further destroy the reputation of our democratic world order.

⁷⁴ “Landmark Cases”, *International Criminal Tribunal for Yugoslavia*, available at, <https://www.icty.org/en/features/crimes-sexual-violence/landmark-cases> (last visited on November 26, 2022).