

REDRESSAL MECHANISM OF HUMAN RIGHTS VIOLATION: INTERNATIONAL PERSPECTIVE

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ABSTRACT

Human rights are rights inherent to all human beings, irrespective of their nationality, gender, language, colour, religion, ethnicity or any other grounds. These rights are considered as inalienable and universal. Human rights are often expressed and guaranteed by law, in the forms of declaration, covenants, customary international law, general principles and other sources of international law which lays down obligations of governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. The numerous human rights conventions under the framework of the United Nations and the regional systems in Africa, the Americas and Europe have led to the creation of a wide range of mechanisms for monitoring compliance with international human rights laws. The paper is intended to analyse the international mechanism for the violation of human rights under various treaty based bodies and charter based bodies working under United Nations.

MEANING OF HUMAN RIGHTS:

The notion of human right is as old as political philosophy. According to the Oxford Companion to Law, the term "human rights" are Claims asserted as those which should be, or sometimes stated to be those which are, largely recognized and protected to secure for each individual the fullest and freest development of personality and spiritual, moral and other independence.¹ Human rights are basic political and social conditions - variously defined to which every individual is entitled as a human being.² The commonly accepted human rights include the freedom of speech, press, worship, association, peaceful demonstration, travel, the absence of discrimination on the grounds of beliefs, race, nationality and sex, and the right to education, the privacy of home and

1. David M. Walker, *The Oxford Companion to Law*. (Oxford: Clarendon Press 1980).

2. Lexicon Universal Encyclopedia (New York: Lexicon Publication Inc), at p. 297-298.

correspondence, freedom from arbitrary arrest and imprisonment, torture, unfair trial cruel and unusual punishment and invasion of privacy, right to food, shelter health care, and education; and freedom of thought, speech, assembly, religion, press, movement and participation in government".³ According to Ernest Barker, "Rights are the external conditions necessary for the greatest possible development of the capacities of the personality."⁴ These are pre-condition for dignified human existence. They are universal in nature; without them we cannot live as human beings. Although human rights have been classified in a number of different manners it is important to note that international human rights law stresses that all human rights are universal, indivisible and interrelated.⁵ On the basis of development there are three generations of human rights focusing on different types of human rights. Whereas Civil and political rights relates to first generation of human rights, the second generation relate to economic, social and cultural rights. The collective rights are considered to be the part of third generation of human rights. (See table: 01, Details about the three generation of human rights)

DEVELOPMENT OF THE CONCEPT:

The concept of human rights finds its origin in ancient Greek and Roman political systems in Europe, Confucian system in China, the Islamic political system in the Muslim world and the Hindu legal system in India. But, the concept of human rights in those systems was understood in the sense as we know it today. However, prior to the beginning of constitutional era, human rights provisions were articulated in British constitutional documents as Magna Carta, 1215, the Petition of Rights, 1628 and the Bill of Rights, 1689⁶ as they were the forerunners of the modern bills of rights. It was in the late 17th and the 18th centuries that the necessity for a set of written guarantees of human freedom was felt as a new philosophy of governance. During 18th century the dignity and rights of man was the

3. Edmund Jan Osmańczyk, *The Encyclopedia of the United Nations and International Agreement*. Second Edition (New York: Taylor & Francis 1990), at p. 390.

4. Quoted in Abdulrahim P. Vijapur, *The Concept of Human Rights: National and International Perspectives*, *International Politics*, Vol.2, No. IV, Summer & Autumn 2009 p 7.

5. Information available at, http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.hrc.uceace.org%2Ffiles%2Fhuman%2520rights%2520reference%2520handbook.pdf&external=N as accessed on August 17, 2015

6. Magna Carta (1215), the Petition of Rights (1628) and the Bill of Rights (1689) were the best-known historic documents. The other documents of importance were the Act of Settlement (1701), The Reform Act of 1832 and the Parliament Act of 1911. In 1998 the British Parliament passed a "Human Rights Act", which became operational in October 2000. This Act incorporates the European Convention on Human Rights (ECHR). The UK had ratified the ECHR in 1951. Now the rights enumerated in ECHR have a status of domestic law.

dominant theme of political philosophy. This was reflected in the historic documents such as in the Virginia Declaration of Rights, 1776, the America Declaration of Independence, 1776, the French Declaration of the Rights of Man and Citizen, 1789 and of more importance, the series of amendments to the U.S. Constitution, adopted in 1791 as the American Bill of Rights⁷. The U.S. model of the Bill of Rights provided a model for the protection of human rights which were followed by Constitution of various states. This trend of incorporation the fundamental rights and liberties continued in the 20th century. Now the overwhelming majority of States in the world have a written Constitution providing restrictions against the abuse of authority and enshrining in one form or another fundamental rights and liberties of individuals.

Table 01

First Generation	Second Generation	Third Generation
<p>Civil and political rights</p> <p>Value based human rights/ Negative rights</p> <p>These rights are related with democratic value, attainment of human dignity, equality and freedom.</p> <p>Source :</p> <p>❖ British Megna Carta</p>	<p>Economic, Social and Cultural Rights</p> <p>Need based human rights/ Positive rights</p> <p>These rights are related with development and problem of food, shelter and cloths.</p> <p>Source :</p> <p>❖ Volsovic Revolution 1917</p>	<p>Collective Rights</p> <p>It is based on the idea of solidarity</p> <p>These rights are essential for the realization of major concern of international community such as peace, development and environment.</p>

7. The first ten amendments to the US Constitution (1791) are popularly known as the Bill of Rights, which guarantees certain individual freedoms to US citizens. These classical rights and liberties are written into both federal and state constitutions. Following civil and political rights are recognized by the American system: the freedom of religion, speech, the press, peaceful assembly, association, and petition; security against unreasonable searches and seizures; protection against deprivation of life, liberty, or property without due process of law; protection against having private property taken for public use without just compensation; the right to a speedy and public trial by an impartial jury; the right to choose counsel for one's defense; to subpoena witnesses in one's favor, and to have a trial that is fair in all respects and in accordance with due processes of law; security against excessive bail or fines and against cruel and unusual punishments; the equal protection of laws; protection against slavery, involuntary servitude, ex-post-facto laws, and unwarranted suspension of the writs of habeas corpus, and various guarantees related to taxation. The original Bill of Rights of 1791 has been expanded from time to time. Later amendments prohibited human slavery (1865), extended the suffrage to racial minorities (1870), granted voting rights to women (1920) and provided equal rights to women and the non-denial or non-abridgement of equality rights on account of sex (1972).

<ul style="list-style-type: none"> ❖ American Declaration of Independence ❖ French Declaration of the rights of man and of citizen <p>Instrument: ICCPR 1966</p>	<ul style="list-style-type: none"> ❖ The Paris Peace Conference 1991 <p>Instrument: ICESCR 1966</p>	<p>These rights can be achieved only by the collective efforts of the members of the society.</p>
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HUMAN RIGHTS UNDER UN CHARTER:

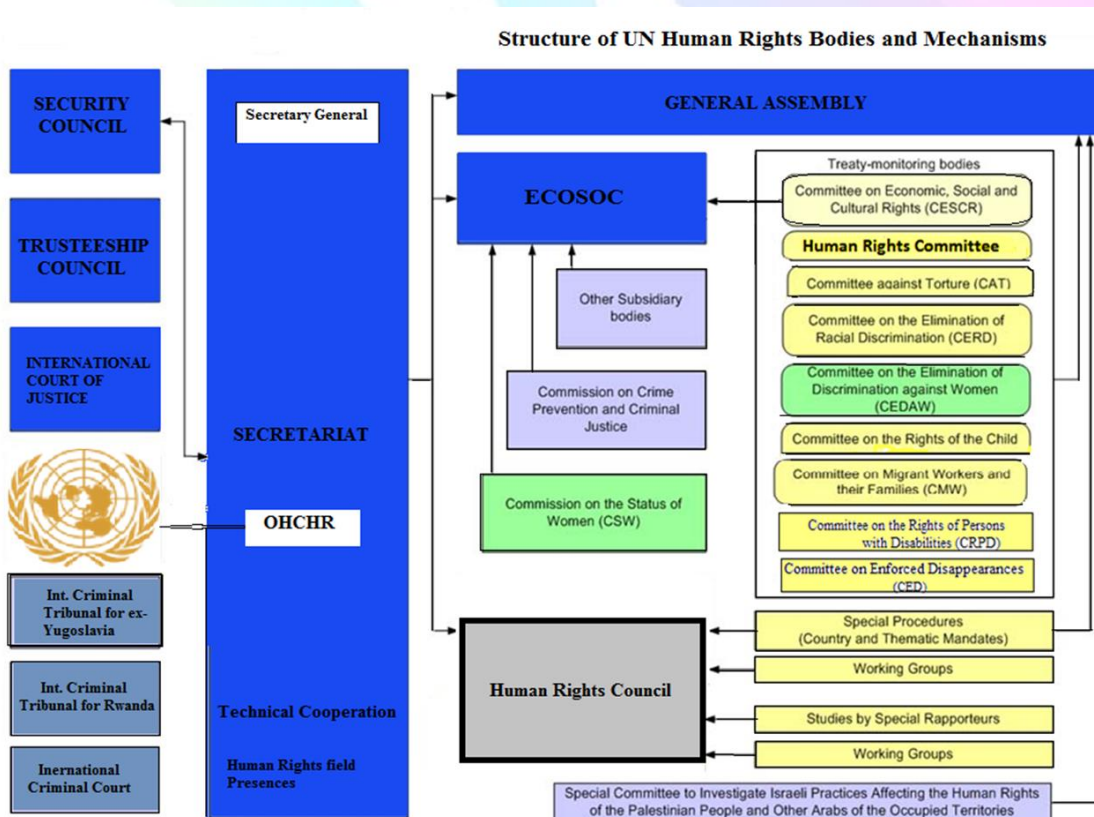
One of the greatest developments in the annals of human history is that for the first time under the aegis of the United Nations on international level a comprehensive list of “human rights” has been recognized which every individual, irrespective of his/her origin, religion, race, color, sex, nationality, etc. can claim as a member of human society. The UN Charter is the first document where, we find the expression 'human rights', which was adopted at San Francisco on 25 June 1945. The preamble of the Charter, which was drawn up to prevent a recurrence of the destruction and suffering caused by the World War II, by setting up the UN, an international organization, which declared that the UN shall have for its object *inter-alia*, to reaffirm faith in fundamental human rights. Article 1(3) of the Charter⁸ states about the very purpose of the UN is to promote and encourage respect for human rights.⁹ Article 13 (1) (b) empowers the UNGA to initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural educational and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex language, or opinion. Article 55, seeking the creation of conditions of stability and well-being necessary for peaceful and friendly relations among nations induces the promotion of Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. According to article 56 all members have

⁸ Article 1(3) of the UN Charter states: “To achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”

⁹ Woldo Chamberlin, Thomas Hovet and Erica Hovet (ed.), *A Chronology and Fact book of the United Nations 1994-1976*. (New York: Oceana Publications Inc. 1976), at 163-164.

pledged themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in article. 55. Article 62 empowers the ECOSOC to make recommendation for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all, and article 68 orders the Council to set up commissions in economic and social fields and for the human rights promotion. Article 76 stipulates that basic objectives of the International Trusteeship System are, inter alia, to encourage respect for human rights and for fundamental freedoms for all. Since some of these provisions figure prominently in the statement of the purposes of the UN, its Members are under an obligation to act in accordance with these purposes. It is their legal duty to respect and observe fundamental human rights and freedoms. In spite of these various references, the charter established no control machinery for the specific purpose of ensuring the observance of human rights obligations. United Nations, its principles and subsidiary bodies under these organs have been contributed in the protection and promotion of human rights (Figure No. 01 shows various principle organs, specialized agencies of the United Nations working in the field of human rights)

Figure No. - 01



Source: UN Official website

The Commission on Human Rights was established in pursuance to the initiative taken by Economic and Social Council of United Nations. The Universal Declaration of Human Rights, 1948 includes both civil-political and economic-social rights in a single document which is supplemented by two Covenants in 1966 including International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. The Universal Declaration of Human Rights has over the years become a part of customary international law. It has been enshrined in the national Constitutions of many States. The adoption of the Universal Declaration of Human Rights was the first achievement in the field of human rights. The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly Resolution 217A (III), on 10 December 1948¹⁰. It represents an international consensus on the common rights to be recognized and observed by all people and nations. There are 30 articles in the Universal Declaration of Human Rights recognizes a series of human rights.¹¹ It has recognized both the civil and political rights and the economic, social and cultural rights. Articles 3 to 21 deal with civil and political rights, while, articles 22 to 28 deals with economic, social and cultural rights. Article 29 of Universal Declaration of Human Rights impose a duty, human being also have obligations to the community which also enable them to develop their individual potential fully and freely¹²

CHARTER BASED BODIES:

With the development of international human rights law under United Nations, a number of human rights bodies have been established for responding various human rights challenges. These bodies can be either charter-based bodies with mandates established by the UN Charter, or treaty-based committees with independent experts set up by international human rights treaties and having mandate to monitor the compliance of treaty obligations by state parties. The Commission on Human

10. The Universal Declaration of Human Rights, Available at <http://www.un.org/en/universal-declaration-human-rights/> accessed on 21 January 2016

¹¹ The rights described in the 30 articles of the Universal Declaration of Human Rights include the right to life, liberty, and security of person; to freedom of conscience, religion, opinion, expression, association and assembly; to freedom from arbitrary arrest; right to a fair and impartial trial; to freedom from interference in privacy home or correspondence; to a nationality; to a secured society and an adequate standard of living; to education; and to rest and leisure. The declaration, also, affirms the rights of every person to own property; to be presumed innocent until proved guilty; to travel from a home country at will and return at will; to work under favourable conditions, receive equal pay for equal work and join labour unions at will; to marry and raise a family and to participate in government and the social life of the community.

12. Abdulrahim P. Vijapur, *The Universal Declaration of Human Rights: A Cornerstone of Modern Human Rights Regime*, 3-23 at 10 in: Abdulrahim P. Vijapur and Kumar Suresh (ed.), *Perspective on Human Rights*. (New Delhi: Manak Publication Pvt Ltd 1999).

Rights, established by Economic and Social Council (ECOSOC) in 1946. It was an overall responsibility of the commission on human rights to consider the question of violations of human rights and fundamental freedoms in all over the world. It also initiates action on the situation of human rights in different parts of the world by appointing special rapporteurs and establishing working groups.¹³

The commission on Human Rights was the key intergovernmental body responsible for human rights within the UN until it was replaced by the Human Rights Council in 2006. In addition to assuming mandates and responsibilities previously entrusted to the Commission, the newly created Council is mandated to report directly to the General Assembly of the United Nations. It was mandated for recommendations for further development of international law in the field of human rights, and undertaking a Universal Periodic Review of the fulfilment of human rights obligations by each State. Charter bodies include Human Rights Council, its Special Procedures and the UN High Commissioner for Human Rights.

HUMAN RIGHTS COUNCIL:

The Council was created by the United Nations General Assembly on 15 March 2006 by resolution 60/251 by replacing the former UN Commission on Human Rights. It is an inter-governmental body within the UN system responsible for strengthening the promotion and protection of human rights around the world and for addressing cases of human rights violations and make recommendations on them. The Council has the ability to discuss all thematic human rights issues and conditions that require its consideration throughout the year. It meets at the UN Office at Geneva. It is made up of 47 United Nations Member States which are elected by the UN General Assembly. In 2007, the Council adopted its "Institution-building package" to guide its work and set up its procedures and mechanisms.¹⁴ Among them were the Universal Periodic Review mechanism which serves to assess the human rights conditions all world. The Advisory Committee which works as the Council's "think tank" advice on thematic human rights issues and the Complaint Procedure which allows individuals

¹³ UN Action in the Field of Human Rights, New York & Geneva, 1994, p. 303

¹⁴ On 18 June 2007, one year after its first meeting, and in compliance with General Assembly resolution 60/251, the Human Rights Council of the United Nations established a new mechanism, called the Universal Periodic Review (UPR). Through this mechanism, the Council decided to review on a periodic basis the fulfilment of the human rights obligations of all countries, ensuring that they are treated equally and are subject to a review of their human rights record.

and organizations to bring human rights violations to the attention of the Council.¹⁵ The system of Special Procedures is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.

UNIVERSAL PERIODIC REVIEW:

According to UN Secretary-General, the Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world."¹⁶ The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.

The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which, by October 2011, has reviewed the human rights records of all 193 UN Member States. Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.¹⁷

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR):

At the Vienna Conference on Human Rights in 1993, the international community decided to establish a more vigorous human rights mandate with stronger institutional support. Accordingly, United Nations created Office of the High Commissioner for Human Rights by a General Assembly

¹⁵ On 18 June 2007, the Human Rights Council adopted resolution 5/1 entitled "Institution-Building of the Human Rights Council" by which a new complaint procedure was established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

¹⁶ STATEMENT, Secretary-General's video message for the opening of the Fourth Session of the Human Rights Council, Available at: <http://www.un.org/sg/STATEMENTS/index.asp?nid=2475>

¹⁷ Universal Periodic Review, UN Office of the High Commissioner for Human Rights, Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>

Resolution in 1993.¹⁸ It is mandated to promote and protect the enjoyment and full realization, by all people, of all rights established in the Charter of the United Nations and in international human rights conventions. OHCHR is guided in its work by the mandate provided by the United Nations General Assembly in resolution 48/141, the Charter of the United Nations, the Universal Declaration of Human Rights and subsequent human rights instruments, the Vienna Declaration and Programme of Action the 1993¹⁹ World Conference on Human Rights, and the 2005 World Summit Outcome Document.

The mandate of the Commissioner includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations system in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies. The mission of the Office of the United Nations High Commissioner for Human Rights (OHCHR) is to work for the protection of all human rights for all people; to help empower people to realize their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

In carrying out its mission OHCHR will:

- Give priority to addressing the most pressing human rights violations, both acute and chronic, particularly those that put life in imminent peril;
- Focus attention on those who are at risk and vulnerable on multiple fronts;
- Pay equal attention to the realization of civil, cultural, economic, political, and social rights, including the right to development; and
- Measure the impact of its work through the substantive benefit that is accrued, through it, to individuals around the world.

Further, OHCHR works with governments, legislatures, courts, national agencies, civil society, regional and international organizations, and the United Nations system to develop and strengthen

¹⁸ UNGA Res. A/RES/48/141, 85th plenary meeting, 20 December 1993

¹⁹ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>

capacity, particularly at the national level, for the protection of human rights in accordance with international norms.

TREATY BASED BODIES:

The Universal Declaration of Human Rights, 1948 includes both civil-political and economic-social rights in a single document which is supplemented by two Covenants in 1966 including International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. The Universal Declaration of Human Rights has over the years become a part of customary international law. It has been enshrined in the national Constitutions of many States. The adoption of the Universal Declaration of Human Rights was the first achievement in the field of human rights. The Universal Declaration of Human Rights was proclaimed by the United Nations General Assembly Resolution 217A (III), on 10 December 1948²⁰. It represents an international consensus on the common rights to be recognized and observed by all people and nations. There are 30 articles in the Universal Declaration of Human Rights recognises a series of human rights.²¹ It has recognized both the civil and political rights and the economic, social and cultural rights. Articles 3 to 21 deal with civil and political rights, while, articles 22 to 28 deals with economic, social and cultural rights. Article 29 of Universal Declaration of Human Rights impose a duty, human being also have obligations to the community which also enable them to develop their individual potential fully and freely²²

After twenty years, of the adoption of the Universal Declaration of Human Rights, the United Nations adopted two human rights covenants namely International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.²³ These Covenants constitute the

20. Available at <http://www.unhcr.ch/udhr/lang/eng.htm>.

²¹ The rights described in the 30 articles of the Universal Declaration of Human Rights include the right to life, liberty, and security of person; to freedom of conscience, religion, opinion, expression, association and assembly; to freedom from arbitrary arrest; right to a fair and impartial trial; to freedom from interference in privacy home or correspondence; to a nationality; to a secured society and an adequate standard of living; to education; and to rest and leisure. The declaration, also, affirms the rights of every person to own property; to be presumed innocent until proved guilty; to travel from a home country at will and return at will; to work under favourable conditions, receive equal pay for equal work and join labour unions at will; to marry and raise a family and to participate in government and the social life of the community.

22. Abdulrahim P. Vijapur, *The Universal Declaration of Human Rights: A Cornerstone of Modern Human Rights Regime*, 3-23 at 10 in: Abdulrahim P. Vijapur and Kumar Suresh (ed.), *Perspective on Human Rights*. (New Delhi: Manak Publication Pvt Ltd 1999).

23. International Covenant on Civil and Political Rights, See, <http://www2.ohchr.org/english/law/ccpr.htm>; and International Covenant on Economic Social and Cultural Rights, see, <http://www2.ohchr.org/English/law/cescr.htm>.

most extensive *corpus* of international treaty law on the subject of human rights. It recognizes a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self-governing and trust territories (colonies) to encourage and respect their self-determination.²⁴ The covenant recognizes series of civil and political rights.²⁵ The Covenant provides the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant.²⁶ It also, allows parties to recognize the competence of the Committee to resolve disputes between parties on the implementation of the Covenant. Rest of the articles relate to the interpretation²⁷ and ratification and amendment of the Covenant.²⁸ The covenant also has two optional protocols for effective implementation of the rights guaranteed under the covenant.²⁹

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the United Nations General Assembly on 16 December 1966, and came into force on 3 January 1976.³⁰ The Covenant commits its parties to work toward the granting of economic, social, and cultural rights to individuals, including labour rights, the right to health, the right to education, and the right to an adequate standard of living. The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights. The International Covenant on Economic, Social and Cultural Rights consists of

24. Article 1, ICCPR (International Covenant on Civil and Political Rights 1966)

25 The Covenant contains articles 2 to 5 which oblige parties to legislate if necessary to give effect to the rights recognized in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also, requires the rights be recognized "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," (Article 2) and to ensure that they are enjoyed equally by women (Article 3). The rights can only be limited "in time of public emergency which threatens the life of the nation," and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion. (Article 4). These include rights to physical integrity, in the form of the right to life and freedom from torture and slavery (Article 6, 7, 8); liberty and security of the person, in the form of freedom from arbitrary arrest and detention (Article 9-11); procedural fairness in law, in the form of rights to due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law (Article 14, 15, 16); individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Article 12, 13, 17-24); political participation, including the right to join a political party and the right to vote (Article 25); Non-discrimination, minority rights and equality before the law. (Article 26, 27)

26. Articles 41 and 42, ICCPR

27. Articles 28 – 45, ICCPR

28. Articles 46 – 47, ICCPR

29 The First Optional Protocol to the International Covenant on Civil and Political Rights is an international treaty establishing an individual complaint system for the International Covenant on Civil and Political Rights. It was adopted by the United Nations General Assembly on 16 December 1966 with International Covenant on Civil and Political Rights and entered into force on 23 March 1976. The Second Optional Protocol to the International Covenant on Civil and Political Rights is aiming at the abolition of the death penalty. It was created on 15 December 1989, and entered into force on 11 July 1991.

30. As of July 2015, the Covenant had 164 parties.

thirty-one articles. The first part of the Covenant recognizes the right to self-determination, including the right to "freely determine their political status." It recognizes right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self-governing and trust territories (colonies) to encourage and respect their self-determination.³¹ The covenant recognizes various economic, social and cultural rights.³²

Further, the Covenant governs reporting and monitoring of the Covenant and the steps taken by the parties to implement the rights enshrined in the covenant.³³ It also allows the monitoring body to make general recommendations to the UN General Assembly on appropriate measures to realize the rights set forth in the Covenant³⁴ and rest of articles relate to ratification, entry into force, and amendment of the Covenant.³⁵ The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights³⁶ is an international treaty establishing complaint and inquiry mechanisms for the International Covenant on Economic, Social and Cultural Rights. It was adopted by the UN General Assembly on 10 December 2008. Human rights treaties relating to promotion and protection of human rights are at the core of the international legal system under the United Nations. There are nine major human rights treaties dealing specific issues relating to human rights. (For details about treaties bodies See, Figure No. 02: Human Rights Treaty System, Table 02: List of Human Rights Treaty bodies)

31. Article 1, ICESCR (International Covenant on Economic, Social and Cultural Rights 1966)

32 The Covenant consists of various economic, social and cultural rights. These include rights to work, under "just and favourable conditions", with the right to form and join trade unions ; social security, including social insurance (Article 9); family life, including paid parental leave and the protection of children(Article 10) ; an adequate standard of living, including adequate food, clothing and housing, and the "continuous improvement of living conditions" (Article 11); health, specifically "the highest attainable standard of physical and mental health"(Article 12); education, including free universal primary education, generally available secondary education and equally accessible higher education. This should be directed to "the full development of the human personality and the sense of its dignity", and enable all persons to participate effectively in society (Article 13, 14); participation in cultural life (Article 15).

33. Articles 16 – 25 ICESCR

34. Article 21 ICESCR

35. Articles 26 – 31 ICESCR

36. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights was opened for signature on 24 September 2009. As of December, 2011, the Protocol has 39 signatories and 5 parties. It will enter into force when ratified by 10 parties.

Figure No. - 02

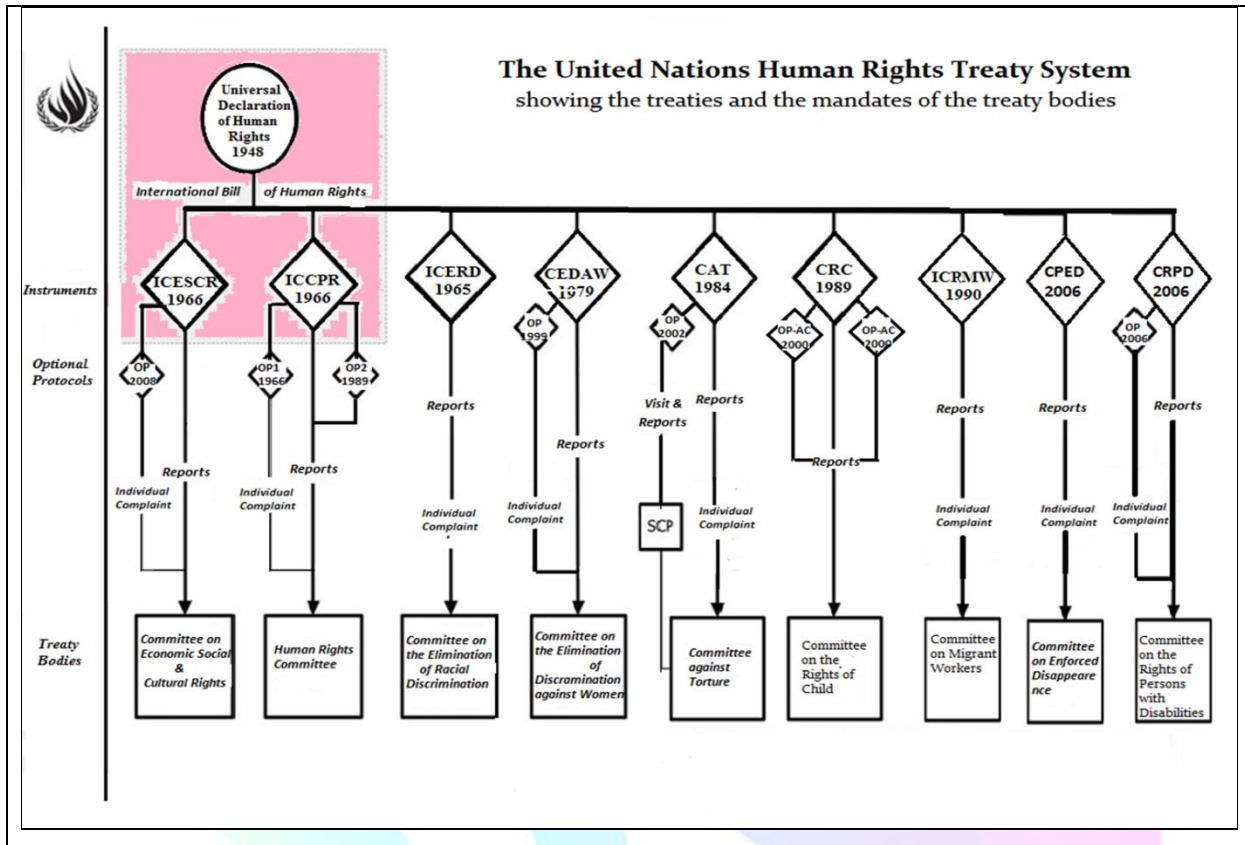


Table 02

Treaty Bodies Established under Major International Treaties on Human Rights

S. No.	Name of the Treaty	Treaty Body Created
1.	International Covenant on Civil and Political Rights (ICCPR)	Human Rights Committee
2.	International Covenant on Social, Economic and Cultural Rights (ICESCR)	Committee on Economic, Social and Cultural Rights
3.	Convention on the Rights of the Child (CRC)	Committee on Child Rights
4.	Convention on the Elimination of Discrimination Against Women (CEDAW)	Committee on the Elimination of Discrimination Against Women
5.	Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination

6.	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	Committee Against Torture
7.	International Convention on Protection of Rights of All Migrant Workers and Members of their Families (MWC)	Committee on Migrant Workers
8.	Convention on the Rights of Persons with Disabilities (CPD)	Committee on the Rights of Persons with Disabilities
9.	International Convention on the Protection of All Persons from Enforced Disappearances	Committee on Enforced Disappearances

HUMAN RIGHTS REDRESSAL MECHANISM:

The effectiveness of any legal system depends on its powers to ‘enforce’ the laws and norms that originate from it. The law related to international human rights is no different. However, the manner in which international human rights treaties are enforced is different from the manner in which domestic laws are enforced. For international treaties, countries come together and agree to abide by norms /standards of conduct / rights and responsibilities that they arrive at by consensus. There is no international police force to monitor countries’ compliances with the obligations they have accepted under various human rights treaties. Except the International Criminal Court, which deals with very specific crimes, and the International Court of Justice (ICJ) which deals only with disputes between states, there is no other international court where individuals may prosecute perpetrators for violations of human rights.

The issue of ‘international enforcement’ is controversial and highly resisted by many states. While the United Nations has been successful in setting standards on many human rights issues, its creation of mechanisms, institutions and procedures to ensure effective enforcement is an ongoing effort, as it largely depends on the consent / will of states. Every UN member State is a party to one or more of the nine major human rights treaties.³⁷ Treaty Bodies are monitoring mechanisms created under

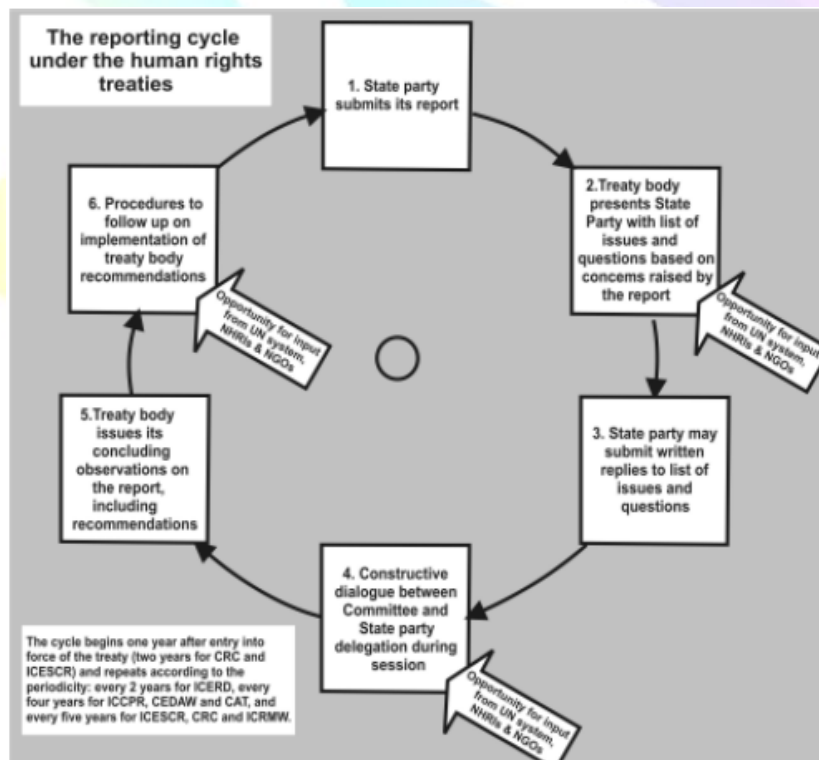
37. See, human right treaties like International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Rights of Persons with Disabilities.

various treaties on human rights to ensure that countries follow their obligations under the treaties. Treaty Bodies give “teeth” to each human rights treaty. Most of Human Rights Treaties have three systems to implement the treaty obligations.

- A. Reporting System
- B. Inter-state Complaint System
- C. Individual Complaint System

Periodic reports – are reports submitted by each country to the treaty body established under the treaties that they have ratified. All ratifying states are under obligation to submit periodic reports, stating in detail their compliance with the treaty provisions. These include legislative, judicial, administrative and other measures undertaken domestically, services provided, budget allocated and statistics and other data that would indicate such compliance. Each treaty has provisions with regard to submission of periodic reports. For example, ICCPR prescribes all states who have ratified the treaty to submit a report within one year of the treaty’s entry into force and thereafter, as and when the Human Rights Committee so requests.³⁸ The procedure of reporting system is shown in Figure No. 03. (Reporting Cycle under the Human Rights Treaties)

Figure No. 03: Reporting Cycle under the Human Rights Treaties



³⁸ Article 40 (1) of the International Covenant on Civil and Political Rights, 1966.

Source: <http://www2.ohchr.org/english/bodies/docs/ReportingCycle.gif>

Besides report submitted by state parties shadow reports are also receive by Committee such reports prepare by members of civil society including human rights activists and non-profit organizations working on human rights issues. These are submitted to the treaty bodies to state the ground realities with regard to the extent to a country's fulfillment of its treaty obligations. The shadow reports serve the purpose of highlighting issues that require further effort from the concerned government, areas where the country has failed to fulfil its obligations, and violations of obligations under the relevant treaty by state agencies/officials. The shadow reports enable the treaty bodies to objectively evaluate and monitor state obligations, as they help verify the claims and statements made by government representatives.

General Comments / Recommendations – provide the treaty bodies' interpretations of the contents of specific articles. The General Comments /Recommendations clarify ambiguities that may exist in the treaty that could hinder the implementation of specific articles of a treaty. They play a significant role by providing authoritative interpretations to various provisions in the treaties. For example, while CEDAW does not expressly mention violence against women, the Committee for Elimination of Discrimination against Women clarified, through a General Recommendation, that gender-based violence is a form of gender discrimination as it is violence which is “directed against a woman because she is a woman”.³⁹

Concluding Comments/Observations made by the treaty bodies with regard to country-specific fulfillment of treaty obligations are helpful to ensure the implementation of treaty. The document is prepared after the treaty body has received and read the periodic and shadow reports, and heard oral representations with regard to a country's fulfillment of treaty obligations. The Concluding Comments work as a directive to the concerned government in highlighting areas for future action. For instance, the Committee on Rights of the Child (established through the Convention on Rights of the Child), in its concluding comments to India, strongly recommended that India prohibit corporal punishment in the family, schools and other institutions.⁴⁰ In situations where the treaty body

³⁹ Para 6 of General Recommendation 19, made by the committee on Elimination of Discrimination against Women at 11th Session held in 1992.

⁴⁰ Concluding Comments of the Committee on the Rights of the Child: India, 35th Session, CRC/C/15/Add.228, dated 26 Feb. 2004, para 45.

observes that a state's performance is less than satisfactory, such an observation can cause embarrassment to the government in the international community, and could provide impetus for the country to improve its human rights standing in the international community.

As per the provisions of certain treaties / Optional Protocols, individuals may also approach the treaty bodies directly for violation of their rights.⁴¹ Nine Treaty bodies (CCPR, CERD, CAT, CEDAW, CRPD, CED, CMW, CESC and CRC) may, under certain conditions, consider individual complaints or communications from individuals.⁴² The basic concept of complaint mechanisms under the human rights treaties is that anyone may bring a complaint against a State party alleging a violation of rights enshrined in the treaty to the body of experts monitoring the treaty. These "treaty bodies" are Committees composed of independent experts elected by States parties to the relevant treaty. They are tasked with monitoring implementation in States parties of the rights set forth in the treaties and with deciding on complaints brought against those States. While there are some procedural variations between the nine mechanisms, their design and operation are very similar.⁴³ However, the Indian government is principally opposed to allowing individuals direct access to the treaty bodies, and has not ratified the concerned legal instruments that would facilitate such a process.⁴⁴ Several of the human rights treaties contain provisions to allow for State parties to complain⁴⁵ to the relevant treaty body about alleged violations of the treaty by another State party. Such procedures have never been used.⁴⁶

CONCLUSION:

In addition to the International Bill of Rights and the core human rights treaties, there are numerous regional instruments and other international declarations, principles, guidelines, standard rules and

⁴¹ Optional Protocol to CEDAW, CERD, CAT, ICCPR and Convention on the Rights of Disabilities provide for the treaty bodies to consider complaints/ communications from individuals including victims/survivors of the violations.

⁴² Complaint Mechanisms under the UN Human Rights Treaties, The Advocates for Human Rights, Available at: <https://www1.umn.edu/humanrts/Treaty%20Body%20mechanisms%20Jan%202014.pdf>

⁴³ Human Rights Treaty Bodies - Individual Communications, UN Office of High Commissioner for Human Rights, Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx>; Alexandra R. Harrington, Don't Mind The Gap: The Rise of Individual Complaint Mechanisms Within International Human Rights Treaties. *Duke Journal of Comparative & International Law* Vol 22:153- 182, Available at: <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1286&context=djcil>

⁴⁴ UNPACKAGING HUMAN RIGHTS: CONCEPTS, CAMPAIGNS & CONCERNS. Contact Start Your Own Notify Me Author Selected Works of New Work. Available at: <http://works.bepress.com/saumyauma/16>

⁴⁵ Article 41 ICCPR; Article 21 CAT; Article 11 CERD; Article 33, Some Regional instrument relating to human rights also have inter- state complaint system, ECHR; Article 45 ACHR; and Article 54 ACHPR.

⁴⁶ Human Rights Bodies - Complaints Procedures, UN Office of High Commissioner for Human Rights, Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>

recommendations relating to human rights which generally considered having no binding legal effect, have an undeniable moral force and provide practical guidance to States in their conduct. Whatever the current attitudes and policies of governments of different states, a deepening and widening concern for the promotion and protection of human rights is now unmistakably woven into the fabric of contemporary world affairs. There are other ways in which international human rights standards are enforced. The UN Charter uses the term 'enforcement' in relation to the powers of the Security Council to use force, including issuance of economic, military and other sanctions on countries in contexts of threat to peace, breach of peace and acts of aggression.⁴⁷ Charter-based organs whose creation is directly mandated by the UN Charter or authorized by one of the organs also contribute to enforcement of international human rights standards. These include the General Assembly, the Economic and Social Council (ECOSOC) and the Human Rights Council. Other human rights mechanisms of the U.N. also contribute to enforcement of human rights, including Working Groups, Special Rapporteurs and Special Representatives on specific issues. Enforcement remains the weakest component of the international human rights system. Designed around the implausible premise of voluntary state compliance, existing international institutions outside of Europe and America and few developed nations currently lack the capacity to meaningfully enforce human rights in a world.⁴⁸ Still the domestic remedy in case of human rights violation is more effective rather than remedy under international treaty mechanism. In order to improve the effective enforcement of human rights through treaty bodies there is a need to encourage States to ratify the relevant Optional Protocols and accepting the treaty provisions that provide for Individual Communications procedures and avoid making reservations under treaties. Raising awareness and disseminating information about human rights procedures will certainly helpful for its better enforcement.

⁴⁷ See, Article 39-51 of the Charter of United Nations

⁴⁸ Douglas Donoho, Human Rights Enforcement in the Twenty-First Century. *Georgia Journal of International and Comparative Law*, Volume 35 2006 Number 1. Available at: <http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1158&context=gjicl>