

International Response to Protection and Enforcement of Human Rights

Reetika Rana, Assistant Professor, Himachal Pradesh University Institute of Legal Studies, Shimla, Himachal Pradesh, India

ranareetika87@gmail.com

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ABSTRACT

As we know that human rights are essential for all-round development of the personality of individual in the society, therefore they necessarily needed to be protected and be made available to all individuals. The United Nation (UN) has created a global structure for protecting human rights, based largely on its Charter, non-binding declaration, legally binding treaties and on various activities aimed at advancing democracy and human rights throughout the world. An effective procedure for the protection and enforcement of human rights would mean substantial change in the distribution of power between member states and UN, within member states and between active decision makers and individual human being.

Keywords: Human Rights, United Nation, Protection, Enforcement, Treaty.

INTRODUCTION

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Human rights, being the birth right, are, therefore, inherent in all individuals irrespective of their caste, creed, religion, sex and nationality.¹ Human right is a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. It is therefore difficult to give a precise definition of term Human rights. The idea of human rights is bound up with the idea of human dignity. Thus all those rights which are essential for the maintenance of human dignity, are called human rights.²

¹ H.O. Agrawal, International Law and Human Rights 650 (Central Law Publication, Allahabad, 2006).

² S.K. Kapoor, International Law and Human Rights 770 (Central Law Publication, Allahabad, 2004).

UNITED NATION AND PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS-

(1) ROLE OF PRINCIPLE ORGAN OF UNITED NATION IN PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS

The term Promotion of Human Rights may mean setting of International standards of Human Rights, education and dissemination. The prime responsibility for the promotion of Human Rights under UN Charter rests in General Assembly³, in the Economic and Social Council⁴ and its subsidiary body- the Commission on Human Rights.

The term Protection of Human Rights which may mean implementation and enforcement action does not find place in the UN Charter. Among the UN agencies only Security Council and International Court of Justice can engage in enforcement action, only they have a competence to pass a binding resolution or issue a binding judgement. The Security Council can threaten or vote sanctions in relation to its own previous actions or that of the Court.⁵ Enforcement is thus the authoritative application of Human Rights. All other actions beyond Promotion but short of Enforcement may be considered as Implementation efforts. Implementation thus includes passing non-binding resolutions about specific problems on state.

(2) TREATY BASED MECHANISM FOR PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS

(a) HUMAN RIGHTS COMMITTEE UNDER INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS-

The 18 member human rights committee implements the human rights in the following 3 ways

(i) The system of Reporting:-

The state parties undertake to submit reports on the measures they have adopted which give effect to the rights recognised in the Covenant and on the progress made in the enjoyment of these rights. State parties are required to submit the said reports within one year of the entry into force of Covenant and

³ UN Charter, 1945, Art.13

⁴ UN Charter, 1945, Art.62

⁵ UN Charter, 1945, Art.41, 42

thereafter whenever the committee so requests. All reports are submitted to the Secretary-General of UN who transmits them to the committee for consideration. The Secretary-General may, after consultation with the committee, transmit to the specialised agencies concerned copies of such reports as may fall within their field of competence. The committee studies the report submitted by state parties and then transmits its reports and such general comments as it considers appropriate, to the state parties. The state parties may submit to the committee observations on any covenants that the committee made.⁶

Although under the Civil Covenant there is an obligation of state parties to submit reports, there is no express obligation to comply with the reports and comments of the committee.

(ii) Inter-State Communication System:-

Besides the aforementioned reporting system, the Civil Covenant also provides for a system of state to state or inter-state communication. If the state party to the present Covenant considers that another state party is not giving effect to the provisions of the present Covenant it may bring the attention of that state party. The communication should be made in writing. The receiving state, within 3 months after the receipt of the communication shall communicate to the sending state an explanation or any other statement in writing clarifying the matter. If the matter is not adjusted to the satisfaction of both the state parties concerned within 6 months after the receipt by the receiving state of the initial communication, either state has the right to refer the matter to the human rights committee, by notice given to the committee and to the other state. However there is a great limitation in making communication to the committee. The communication shall be received and considered by the committee only if it is submitted by a state party which has made a 'declaration' recognising in regard to itself the competence of the committee. If any communication is received by the committee, it examines only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of international law. The communication is examined by

⁶ International Covenant on Civil and Political rights, 1966, Art. 40, Para 1, 2, 3, 4 and 5

the committee in a close meeting. The committee makes available its good offices to the state parties concerned with a view to friendly solution of matter on the basis of respect for human rights and fundamental freedoms as recognised in the Covenant. If the solution is reached, the committee shall confine its report to a brief statement of facts, and of solution reached. If committee fails to reach on any solution, its report is confined to brief statement of facts. In both cases report is communicated to the state parties concerned.⁷

(iii) Conciliation Procedure:-

If an Inter-State communication provides under Article 41 is not resolved to the satisfaction of the state parties concerned, the committee may with prior consent of the state parties concerned, appoint an ad hoc conciliation commission so as to make available to state parties concerned the good offices of commission with a view to make an amicable solution of the matter on the basis with respect for present Covenant.⁸ After the commission has fully considered the matter but in every event not later than 12 months after having been seized of the matter, it shall submit to the Chairman of the committee a report for communication to the state parties concerned. In case the commission is unable to complete the consideration of matter within 12 months, it shall confine its report to a brief statement of status of its consideration of matter. In case, however, an amicable solution on the basis of respect for human rights is reached, the commission shall confine its report to a brief statement of facts of solution reached.⁹

(iv) Individual Communication System:-

Individuals have also been given a right to make petition before human rights committee against the state violating any of the rights provided in the Covenant on Civil and Political Rights. However, the right does not find place in the Covenant itself. It is provided in the Optional Protocol to the Covenant on Civil and Political Rights. This method of implementation is available to state parties to Civil Covenant who are also parties to Optional Protocol.

⁷ International Covenant on Civil and Political rights, 1966, Art.41(1), Art.41(2)

⁸ International Covenant on Civil and Political rights, 1966, Art.42(1)(a)

⁹ International Covenant on Civil and Political rights, 1966, Art.42(7)(a),(b)

The committee is empowered to consider only those communications from individual which are not being examined under any another procedure of international investigation or settlement, and when all available domestic remedies are exhausted.¹⁰

(b) COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS UNDER INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS-

The 18 member committee on Economic, Social and Cultural rights implements the human rights in the following way

(i) Reporting System:-

The Covenant provides reporting system for implementation of the provisions and there is no procedure for implementation other than reporting system. Under the system the state parties undertake to submit reports to the committee on Economic, Social and Cultural rights who shall transmit copies to the Economic and Social Council for consideration and to concerned specialised agencies. The Economic and Social Council may transmit the report submitted by the states to the Commission on Human Rights for study and general recommendation. After a general recommendation is made by Commission on Human Rights, the state parties to the Covenant and specialised agencies concerned may submit comments to the Economic and Social Council. The council may submit from time to time to the General Assembly the reports with recommendation of a general nature and summary of information received from state parties to the Covenant and the specialised agencies.¹¹

(c) INTERNATIONAL CRIMINAL COURT-

The ICC operates as a backup system to efforts at national level to prosecute war crimes and human rights violations. A person alleged to have committed a crime under the ICC Statute whose country is unwilling or unable to prosecute him falls under the jurisdiction of the ICC if (i) the country of which the accused is a citizen is a party to Statute or has authorized the jurisdiction of Court in the matter (ii) the country in whose territory the accused allegedly committed the crime is a party to the Statute or has authorised the jurisdiction of Court (iii) the crime the accused allegedly committed is referred to the Court by the Security Council.

¹⁰ Optional Protocol to the International Covenant on Civil and Political rights, 1966, Art.1,2,3

¹¹ International Covenant on Economic, Social and Cultural Rights, 1966, Art.16,17,18,19,20,21

The Statute identifies four crimes over which ICC may exercise jurisdiction (i) genocide (ii) crime against humanity (iii) war crimes and (iv) crime of aggression.¹² Thus jurisdiction of the Court shall be limited to the most serious crimes of concern to international community. A person who commits a crime shall be individually responsible for the crime.¹³

CONCLUSION

From the foregoing account of human rights, it would be clear that efforts made in the past to protect human rights at international level have not been very promising. Implementation of international human rights law depends largely on voluntary compliance by the states. Security Council, of course, can take collective action against a state if it decides that violation of human right by state is likely to endanger international peace and security. The above limitation on the implementation of human rights at international level make it clear that most effective way to implement human rights vests within the legal systems of different states. Domestic law of state is required to provide an effective system of remedies for violation of international law obligation. The effective protection of human rights is possible only when a new look is given to the meaning of the concept of Sovereignty and expression human rights. It would mean that the member states should agree themselves for the curtailment of national sovereignty to some extent. If the states are at all serious for the promotion and protection, it is quite essential to provide remedy at international level.

¹² Statute of International Criminal Court, 1945, Art.5

¹³ Statute of International Criminal Court, 1945, Art.19