

CHAPTER VI HUMAN RIGHTS

Definition of Human Rights: Human Rights are the basic rights and freedoms to which all humans are entitled.

United Nations Charter

The United Nations Charter is the treaty that forms and establishes the international organization called the United Nations. It was signed at the United Nations Conference on International Organization in the Veterans Auditorium (now the Herbst Theatre) of the War Memorial Veterans Building in San Francisco, California, United States, on June 26, 1945, by 50 of the 51 original member countries (Poland, the other original member, which was not represented at the conference, signed it later). It entered into force on October 24, 1945, after being ratified by the five permanent members of the Security Council—the Republic of China (later replaced by the People's Republic of China), France, the Union of Soviet Socialist Republics (later replaced by the Russian Federation), the United Kingdom, and the United States—and a majority of the other signatories.

As a charter, it is a constituent treaty, and all members are bound by its articles. Furthermore, the Charter states that obligations to the United Nations prevail over all other treaty obligations. Most countries in the world have now ratified the Charter. One notable exception is the Holy See, which has chosen to remain a permanent observer state and therefore is not a full signatory to the Charter.

International Bill of Human Rights

The International Bill of Human Rights is an informal name given to two international treaties and one General Assembly resolution established by the United Nations. It consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols and the International Covenant on Economic, Social and Cultural Rights (1966).¹ The two covenants entered into force in 1976, after a sufficient number of countries had ratified them.

In the beginning, different views were expressed about the form the bill of rights should take. In 1948, General Assembly planned the bill to include UDHR, one Covenant and measures of implementation. The Drafting Committee decided to prepare two documents: one in the form of a declaration, which would set forth general principles or standards of human rights; the other in the form of a convention, which would define specific rights and their limitations. Accordingly, the Committee transmitted to the Commission on Human Rights draft articles of an international declaration and an international convention on human rights. At its second session, in December 1947, the Commission decided to apply the term "International Bill of Human Rights" to the series of documents in preparation and established three working groups: one on the declaration, one on the convention (which it renamed "covenant") and one on implementation. The Commission revised the draft declaration at its third session, in May/June 1948, taking into consideration comments received from Governments. It did not have time, however, to consider the covenant or the question of implementation. The declaration was therefore submitted through the Economic and Social Council to the General Assembly, meeting in Paris.

The Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

The Convention defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a

basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

United Nations Convention on the Rights of the Child

United Nations Convention on the Rights of the Child The United Nations Convention on the Rights of the Child, often referred to as **CRC or UNCRC**, is an international convention setting out the civil, political, economic, social and cultural rights of children. Nations that ratify this international convention are bound to it by international law. Compliance is monitored by the United Nations Committee on the Rights of the Child which is composed of members from countries around the world. Once a year, the Committee submits a report to the Third Committee of the United Nations General Assembly, which also hears a statement from the CRC Chair, and the Assembly adopts a Resolution on the Rights of the Child.

Governments of countries that have ratified the Convention are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the Convention and the status of child rights in their country. Their reports and the committee's written views and concerns are available on the committee's website.

The United Nations Convention against Torture

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is an international human rights instrument, under the review of the United Nations that aims to prevent torture around the world.

The Convention requires states to take effective measures to prevent torture within their borders, and forbids states to return people to their home country if there is reason to believe they will be tortured.

The text of the Convention was adopted by the United Nations General Assembly on 10 December 1984 and, following ratification by the 20th state party, it came into force on 26 June 1987. 26 June is now recognised as the International Day in Support of Torture Victims, in honour of the Convention. As of December 2008, 146 nations are parties to the treaty, and another ten countries have signed but not ratified it.

Western and Islamic perspective of human rights is not something different; the basic concept is the same, however they only differ in TIME and SOURCE

Islamic Perspective

As an eternal religion of humanity, Islam is a champion of human rights and liberties. In actual practice, it is the first religion in the human history, which gave a charter of human rights & freedom. Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice. Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement within the framework.

Charter of Human rights:

In the light of Holy Quran, Our Holy Prophet (s.a.a.w) issued a vast package of human rights, which terminated all blood feuds and enmities. Lawlessness came to an end, and life, liberty & property of everybody was honoured and protected. Almost equal rights are granted to the Non-Muslims as well. In Islam, the last sermon of Holy Prophet (s.a.a.w) is considered as the "charter of human rights". Few imp points are:

I. Right to Life: Human life is sacred and inviolable and every effort shall be made to protect it. Islam provided the right to life to all humans irrespective of their religion, cast or sex.

II. Right to Freedom: Man is born free. No restrictions shall be made on his right to liberty except in due process of the Law. Every individual and every person has the inalienable right to freedom in all its forms; physical, cultural, economic and political. It also includes: Right to Freedom of Religion, Right to Freedom of Thought and expression, and Right to Freedom of Movement.

III. Right to Protection Against Torture: No person shall be subjected to torture in mind or body, or degraded, or threatened. Nobody can be forced to confess to the commission of a crime or to consent to an act, which is injurious to his interests

IV. Right to Own Property: Islam also provides the right of own property by all the citizens of state without any discrimination. No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

V. Right to Social Security: Every person has the right to food; shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

VI. Right to Education: Every person is entitled to receive education in accordance with his natural capabilities irrespective of sex. Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his personality.

Western Perspective

According to the Western concept, human rights are “the inherent claims and entitlements of human beings without any distinction”. They are universal & inalienable. The western concept evolved over centuries of struggle. As a result of global efforts after the Second World War, human rights were legalized.

UNO As A Protector of Human Rights:

The disrespect of Human rights during the 2nd world war motivated many nations to establish an institution that would stop these violations. Therefore the United Nations was established in 1945 with the primary purpose of promoting respect of human rights without any discrimination of sex, race, color, and origin, religious & social concepts. The United Nations Charter is the first international mechanism that incorporated human rights as a concept and made the promotion and protection of those rights, which are individual and collective obligations of states. UDHR and later on IBR had given attention towards the survival, protection, developmental & participatory rights of all the men, women & children. Thus, UNO is considered as a protector of human rights. Universal Declaration of human rights: UN committee enunciated UDHR in Dec. 1948. It is not a legal binding. However, to give it legal force, 2 covenants were formerly added. Collectively, they are known as INTERNATIONAL BILL OF RIGHTS (IBR). Its preamble recognizes that: “the inherent dignity & equal & inalienable rights of all members of the human family is the foundation of freedom, justice & peace in the world”. Its aim was to achieve “the promotion of universal respect for and observance of human rights and fundamental freedoms”.

Key Points:

1. Liberty & equality is the birth right of all human beings.
2. Everyone is entitled to the rights set by UDHR without any distinction of color, sex, birth, religion, opinion etc.
3. Everyone has the right of LIFE, SECURITY & TO OWN PROPERTY.
4. Everyone has the freedom of OPINION, EXPRESSION & RELIGION.
5. Everyone has the right to education; education shall be free- at least on primary level.

6. Everyone has the right to a standard of living adequate for his health & well being including food, clothing, shelter, medical care etc.

Constitutional provisions in Pakistan related to Human rights

FUNDAMENTAL RIGHTS

Laws inconsistent with or in derogation of fundamental rights to be void:

Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

Security of person:

No person shall be deprived of life or liberty, save in accordance with law.

Safeguards as to arrest and detention:

No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, [within fifteen days] from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Right to fair trial:

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.]

Slavery, forced labour, etc. prohibited:

(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

(2) All forms of forced labour and traffic in human beings are prohibited.

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

Protection against double punishment and self-incrimination:

- No person:- (a) shall be prosecuted or punished for the same offence more than once; or
- (b) Shall, when accused of an offence, be compelled to be a witness against himself.

Inviolability of dignity of man, etc:

- (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.
- (2) No person shall be subjected to torture for the purpose of extracting evidence.

Freedom of movement:

Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.

Freedom of assembly:

Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

Freedom of association:

Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

Freedom of trade, business or profession:

Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

Freedom of speech:

Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court,[15][commission of] or incitement to an offence.

Right to information:

Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.]

Freedom to profess religion and to manage religious institutions:

Subject to law, public order and morality:- (a) every citizen shall have the right to profess, practice and propagate his religion; and

(b) Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

Safeguard against taxation for purposes of any particular religion:

No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

Right to acquire property:

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

Protection of property rights: (1) No person shall be compulsorily deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

Equality of citizens: (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

Right to education:

The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.

Non-discrimination in respect of access to public places:

(1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

Safeguard against discrimination in services:

No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

Preservation of language, script and culture:

Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

Human Rights Situation in Pakistan

The Constitution of Islamic Republic of Pakistan obligates the state of Pakistan to protect and promote human rights of all its citizens without any discrimination. Furthermore, Pakistan being a responsible member of the international community honours its obligations.

The Constitution of Islamic Republic of Pakistan is the primary legal source of protection of fundamental rights. The “Principles of Policy” lays down fundamental rights in the constitution which ensures full participation of women in national life; protection of minorities; promotion of social justice and eradication of the social evils; promotion of local self-government; promotion of social and economic well-being of the people, and the promotion of international peace.

However, the situation on ground contains profound challenges with opportunities to improve the human rights situation in the country. On one hand due to lack of education, awareness, prevalence of certain social and cultural discriminatory patterns and taboos, human rights violation prevails resulting in issues such as discrimination against women, child abuse, human trafficking, violence against women and children, discrimination against persons with disabilities, bonded and child labour. On the other hand, the effective enforcement of laws and vibrant institutional mechanisms are needed for protection of human rights which will eventually pave the way for elimination of extrajudicial killings, torture, rape, poor prison conditions, arbitrary arrest and lengthy pre-trial detention, violations of due process, harassment, and limits on freedom of association, religion and movement.

The International Community has also committed to facilitate Pakistan to overcome these problems not only through legislation but through effective administrative measures and to work for promotion of human rights which are compatible with international standards as codified in various international treaties/conventions.

Pakistan has undertaken commitments to uphold the universal human rights standards and to implement them at the national level. The Action Plan to improve Human Rights situation in Pakistan, attaches high priority for implementation of Government of Pakistan’s international commitments and proposed actions related to capacity building and effective functioning of Treaty Implementation Cells (TICs) established at federal and provincial level and a study on core human rights conventions to identify gaps in policies, legal cover and institutional mechanisms for bringing further program interventions.

In the pursuit of promotion and protection of human rights and fundamental freedoms, the Government continues to face challenges, including among others, combating terrorism, resource constraints, capacity building, awareness raising, effective enforcement of laws and policies, protection of vulnerable groups and natural disasters due to climate change, among others.

As a democratic and progressive state, Pakistan is firmly resolved to uphold, promote and safeguard universal human rights and fundamental freedoms for all. With strengthened democracy, independent judiciary, free media and active civil society, Pakistan is confident of continuing the path of further improvement, promotion and protection of human rights of all its citizens.

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