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# Protection of Human Rights under International Law and International Court

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**Abstract**

*Human rights are those rights, which have inherent in a human person by virtue of his birth as a human being. These rights are highly essential to protect the dignity and worth of the human person and hence to be ensured by the State authorities. They are universal and therefore called Universal Human Rights. The principle of equality before law and prohibition of discrimination constitutes the essence of rule of law and fundamental freedoms. Attainment of equality of status and protection of human rights are implicit in all the international instruments dealing with human rights and international court. After the Second World War the international community as a whole was concerned with the protection of human rights. The international instruments on human rights cast an obligation on the Member States to incorporate the norms into the domestic law. This article is an attempt to explore the protection of human rights under international law and to examine the ways in which the human rights could be better protected in the light of international movements with special reference to national legislation and judicial decisions.*

**Keywords:** *Human Rights, Law, Legislations*

## Introduction

Human rights are "rights and freedoms to which all humans are entitled." Proponents of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being human. Human rights are thus conceived in a Universalist and egalitarian fashion. Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights supported by strong reasons, or as legal rights either at a national level or within international law. However, there is no consensus as to the precise nature of what in particular should or should not be regarded as a human right in any of the preceding senses, and the abstract concept of human rights has been a subject of intense philosophical debate and criticism.

## Historical Background

The phrase "human rights" is relatively modern the intellectual foundations of the modern concept can be traced through the history of philosophy and the concepts of natural law rights and liberties as far back as the city states of Classical Greece and the development of Roman Law. The true forerunner of human rights discourse was the enlightenment concept of natural rights developed by figures such as John Locke and Immanuel Kant and through the political realm in the United States Bill of Rights and the Declaration of the Rights of Man and of the Citizen.

The concept of rights certainly existed in pre-modern cultures; ancient philosophers such as Aristotle wrote extensively on the rights (to dikaion in ancient Greek, roughly a 'just claim')

of citizens to property and participation in public affairs. However, neither the Greeks nor the Romans had any concept of universal human rights; slavery, for instance, was justified in both ancient and modern times as a natural condition.

The basis of most modern legal interpretations of human rights can be traced back to recent European history. The Twelve Articles (1525) are considered to be the first record of human rights in Europe. They were part of the peasants' demands raised towards the Swabian League in the German Peasants' War in Germany. In Britain in 1683, the English Bill of Rights (or "An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown") and the Scottish Claim of Right each made illegal a range of oppressive governmental actions. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776 encoded into law a number of fundamental civil rights and civil freedoms.

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and G.W.F. Hegel during the 18th and 19th centuries. The term human rights probably came into use some time between Paine's The Rights of Man and William Lloyd Garrison's 1831 writings in The Liberator, in which he stated that he was trying to enlist his readers in "the great cause of human rights".

In the 19th century, human rights became a central concern over the issue of slavery. A number of reformers, such as William Wilberforce in Britain, worked towards the abolition of slavery. This was achieved in the British Empire by the Slave Trade Act 1807 and the Slavery Abolition Act 1833. Many groups and movements have achieved profound social changes over the course of the 20th century in the name of human rights. In Western Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labor. The women's rights movement succeeded in gaining for many women the right to vote. National liberation movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars.

The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation and diplomacy, and improving global welfare. At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role; this was to be the United Nations. The United Nations has played an important role in international human-rights law since its creation. Following the World Wars, the United Nations and its members developed much of the discourse and the bodies of law that now make up international humanitarian law and international human rights law.

**Philosophy**

The philosophy of human rights attempts to examine the underlying basis of the concept of human rights and critically looks at its content and justification. One of the oldest Western philosophies on human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Human rights are also described as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). The two theories that dominate contemporary human rights discussion are

the interest theory and the will theory. Interest theory argues that the that the principal function of human rights is to protect and promote certain essential human interests, while will theory attempts to establish the validity of human rights based on the unique human capacity for freedom. Philosophers who have criticized the concept of human rights include Jeremy Bentham, Edmund Burke, Friedrich Nietzsche and Karl Marx. A recent critique has been advanced by Charles Blattberg in his essay "The Ironic Tragedy of Human Rights."

**Protection of Human Rights under International Law**

Modern international conceptions of human rights can be traced to the aftermath of World War II and the foundation of the United Nations. Article 1(3) of the United Nations charter states that one of the purposes of the UN is: "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all.

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948, partly in response to the atrocities of World War II. The UDHR urges member nations to promote a number of human, civil, economic and social rights, asserting these rights as part of the "foundation of freedom, justice and peace in the world." The declaration was the first international legal effort to limit the behaviour of states and press upon them duties to their citizens following the model of the rights-duty duality. ...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

**Preamble to the Universal Declaration of Human Rights, 1948**

Some of the UDHR was researched and written by a committee of international experts on human rights, including representatives from all continents and all major religions, and drawing on consultation with leaders such as Mahatma Gandhi. The inclusion of civil, political, economic, social and cultural rights was predicated on the assumption that all human rights are indivisible and that the different types of rights listed are inextricably linked.

**Treaties**

In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human-rights law.

Since then numerous other treaties (pieces of legislation) have been offered at the international level. They are generally known as human rights instruments. Some of the most significant, referred to (with ICCPR and ICESCR) as "the seven core treaties", are:

- Convention on the Elimination of All Forms of Racial Discrimination (CERD) (adopted 1966, entry into force: 1969)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 1979, entry into force: 1981)13
- United Nations Convention Against Torture (CAT) (adopted 1984, entry into force: 1984)
- Convention on the Rights of the Child (CRC) (adopted 1989, entry into force: 1989)
- Convention on the Rights of Persons with Disabilities (CRPD) (adopted 2006, entry into force: 2008)14
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW or more often MWC) (adopted 1990, entry into force: 2003)

**Humanitarian Law**

The Geneva Conventions came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions safeguard the human rights of individuals involved in armed conflict, and build on the 1899 and 1907 Hague Conventions, the international community's first attempt to formalize the laws of war and war crimes in the nascent body of secular international law. The conventions were revised as a result of World War II and readopted by the international community in 1949.

**International Organizations**

**Human Rights Council**

The United Nations Human Rights Council, created at the 2005 World Summit to replace the United Nations Commission on Human Rights, has a mandate to investigate violations of human rights. The Human Rights Council is a subsidiary body of the General Assembly and reports directly to it. It ranks below the Security Council, which is the final authority for the interpretation of the United Nations Charter. The Council is based in Geneva, and meets three times a year; with additional meetings to respond to urgent situations. The Human Rights Council may request that the Security Council take action when human rights violations occur. This action may be direct actions, may involve sanctions, and the Security Council may also refer cases to the International Criminal Court (ICC) even if the issue being referred is outside the normal jurisdiction of the ICC.

**Non-governmental Organizations**

International non-governmental human rights organizations such as Amnesty International, Human Rights Watch, International Service for Human Rights and FIDH monitor what they see as human rights issues around the world and promote their views on the subject. Human Rights organizations have been said to ""translate complex international issues into activities to be undertaken by concerned citizens in their own community".

**Regional human rights**

The three principal regional human rights instruments are the African Charter on Human and Peoples' Rights, the American Convention on Human Rights (the Americas) and the European Convention on Human Rights.

**Legal Issues**

**Human rights vs. national security**

With the exception of non-derogable human rights (international conventions class the right to life, the right to be free from slavery, the right to be free from torture and the right to be free from retroactive application of penal laws as non-derogable), the UN recognises that human rights can be limited or even pushed aside during times of national emergency – although Rights that cannot be derogated for reasons of national security in any circumstances are known as peremptory norms or jus cogens.

**Human rights violations**

Human rights violations occur when any state or non-state actor breaches any part of the UDHR treaty or other international human rights or humanitarian law. In regard to human rights violations of United laws. Article 39 of the United Nations Charter designates the UN Security Council (or an appointed authority) as the only tribunal that may determine UN human rights violations.

When a government closes a geographical region to journalists, it raises suspicions of human rights violations. Seven regions are currently closed to foreign journalists:

- Chechnya, Russia
- Myanmar (Burma)
- North Korea
- Papua, Indonesia
- Peshawar, Pakistan
- Jaffna Peninsula, Srilanka
- Eritrea

**Role of International Court of Justice**

The **International Court of Justice** (French: Cour internationale de justice; commonly re-

ferred to as the World Court or ICJ) is the primary judicial organ of the United Nations. It is based in the Peace Palace in The Hague, Netherlands. Its main functions are to settle legal disputes submitted to it by states and to provide advisory opinions on legal questions submitted to it by duly authorized international organs, agencies, and the UN General Assembly. The ICJ should not be confused with the International Criminal Court, which potentially also has global jurisdiction.

Activities Established in 1945 by the UN Charter, the Court began work in 1946 as the successor to the Permanent Court of International Justice. The Statute of the International Court of Justice, similar to that of its predecessor, is the main constitutional document constituting and regulating the Court.

The Court's workload covers a wide range of judicial activity. To date, the ICJ has dealt with relatively few cases. However, since the 1980s there has been a clear increase in willingness to use the Court, especially among developing countries. After the court ruled that its covert war against Nicaragua was in violation of international law, the United States withdrew from compulsory jurisdiction in 1986,. The US now only accepts the court's jurisdiction on a case-by-case basis. Chapter XIV of the United Nations Charter authorizes the UN Security Council to enforce World Court rulings. However, such enforcement is subject to the veto power of the five permanent members of the Council. Presently there are twelve cases on the World Court's docket.

**Conclusion**

In this manner ICJ within it's limited jurisdiction has resolved important international disputes & thereby has contributed in ensuring international peace & security. However, it's jurisdiction needs to be rationalised by creating a wing for conducting those involved in terrorist activities & in violation of human rights. It will be a better alternative to special courts like ICTY, ICTR & International Criminal Court.

**Implementation of Human Rights**

States, through national governments, have the primary responsibility to ensure human rights. They must equally respect, protect and fulfill economic, social and cultural rights. Where States lack the necessary resources to realize economic, social, and cultural rights, they should seek and receive international assistance to do so. Very often, the violation of those rights is not just because of inadequate resources; it is a matter of unwillingness, negligence and discrimination.There is increasing cooperation seen amongst States in matters of international trade agreements. Multinational companies have their head offices and operations control in one country and yet operate in another. States support other countries through international development assistance. They act together through international financial institutions. If all this is possible by international cooperation amongst States, why should not they also have human rights obligations beyond their borders? In these and other cases, governments must ensure that they do not violate human rights abroad, that they protect the population of other countries from abuses caused by those they should regulate, and they should act to support the realization of human rights universally, ensuring non-discrimination and the protection of the most vulnerable sections. Multinational and national companies must also contribute to human rights and ensure that there are no violations, no matter where they operate. In fact, it must be realized that assistance to marginalized people is not a matter of charity; it is a human rights obligation. There is increasing international clamour for the legal enforcement of economic, social and cultural rights, and for bringing an end to grave abuses that target marginalized and excluded people.

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