

## **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)**

International Covenant on Civil and Political Rights came into force on March 23, 1976. Till 2019 it had 173 signatory countries. This covenant consists of 53 Articles and is divided into 6 parts. ICCPR protects rights like the right to life, liberty, fair trial, freedom of speech and expression, etc.

The purpose of forming ICCPR was to recognize the inherent dignity of each individual and undertake to promote conditions within states to allow the enjoyment of civil and political rights. The main intention behind forming ICCPR was to strengthen the legal bases of Human Rights. The fact that UDHR is not legally enforceable, and ICCPR on the other hand, is legally enforceable; the signatory countries that have ratified this covenant and now under the obligation to abide by the Articles mentioned under ICCPR and any violation of these right are considered, as punishable offences. Any report, if made by an individual or by an organization regarding of violation of any human rights made by their state, shall be investigated. Article 28 of ICCPR states that there should be a Human Rights Committee which shall perform different functions, like making reports, enforcing the rights, etc. Article 40 and 41 of ICCPR indicates how the reports are to be formed and to whom it should be submitted, and what are the things that should be mentioned in the report.

### **BACKGROUND**

The United Nations International Covenant of Civil and Political Rights (ICCPR) attempts to ensure the protection of civil and political rights. It was adopted by the United Nations' General Assembly on December 19, 1966, and it came into force on March 23, 1976. The International Covenant on Economic Social and Cultural Rights, the Universal Declaration of Human Rights, and the ICCPR and its two Optional Protocols, are collectively known as the International Bill of Rights.

### **PURPOSE:**

The ICCPR recognizes the inherent dignity of each individual and undertakes to promote conditions within states to allow the enjoyment of civil and political rights. Countries that have ratified the Covenant are obligated “to protect and preserve basic human rights... [and] “compel[ed] to take administrative, judicial, and legislative measures in order to protect the rights enshrined in the treaty and to provide an effective remedy.” There are currently 74 signatories and 168 parties to the ICCPR.

## **CONTENT**

The unifying themes and values of the ICCPR are found in Articles 2 and 3 and are based on the notion of non-discrimination. Article 2 ensures that rights recognized in the ICCPR will be respected and be available to everyone within the territory of those states who have ratified the Covenant (State Party). Article 3 ensures the equal right of both men and women to the enjoyment of all civil and political rights set out in the ICCPR.

## **ENFORCEMENT**

Article 2(2) of ICCPR provides that State Parties are to take the “necessary steps.... to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” Countries that have ratified the ICCPR must take steps in their own jurisdictions to recognize the acceptance of this international covenant because, in “international law, a signature does not usually bind a State. The treaty is usually subject to a future ratification, acceptance, approval or accession.” In Canada, the accession process involves a series of reviews and consultation by the federal government and followed by a tabling of the treaty in Parliament.

In addition to State Parties’ formally adopting and recognizing the ICCPR in their jurisdiction, Article 28 of ICCPR provides for a Human Rights Committee (Committee) to be established for monitoring the State Parties’ implementation of the Covenant. State Parties are required to submit reports to the Committee for review, on measures used to adopt and give effect to the rights enshrined in the ICCPR.

As mentioned above, the First Optional Protocol allows victims of human rights violation to be heard by the Committee. However the ICCPR also provides in Article 41 that a State Party who claims another State Party is not fulfilling its obligations to implement ICCPR, may make written submissions to the Committee for consideration. Also, non-governmental organizations (NGOs) may also participate in ensuring that values under the ICCPR are protected by submitting ‘shadow reports’ and highlight areas for consideration by the Committee.

## **ICCPR AND CONSTITUTION OF INDIA**

**Article 1**– provides that the states that the right to self-determination is universal and calls upon States to promote the realization of that right and to respect it.

**Article 2**– each state party must respect and ensure that the rights provided under this covenant is enforced and the rights are provided to each and every individual of the state irrespective of

their race, gender, caste, sex, language, religion, political or other opinions. The article further provides that every individual whose rights are violated should be provided with a suitable remedy.

**Article 6, 7 and 8**—protecting the individual against any death penalty, in India the death penalty still prevails. In *Bachchan Singh v. the State of Punjab*, the Supreme Court observed that the provisions for the capital punishment under section 302 IPC are not violative of Article 21 of the Indian Constitution, though Article 72 of the Indian Constitution gives the President the power to grant a pardon, remit or commute a sentence of any person convicted of any offence under this law. Article 7 prohibits human degrading punishment, cruel treatment, and Article 8 protects every individual against the slave trade or forced labour.

**Article 9**— protects the individual against arbitrary arrest or detention.

**Article 10**— states that no matter whether the person has committed the crime or not he should be treated with respect and dignity. In *Charles Shobraj v. Superintendent, Central Jail, Tihar, New Delhi*, AIR 1978, the apex court recognized that the ‘right to life’ is more than mere animal existence or vegetable substance. Even in prison, a person is required to be treated with dignity and one enjoys all the rights specified in Article 19 and 21. Article 10 also provides that the state should also set up juvenile prisons.

**Article 11-** protects the individual against breach of contract, in *Jolly George Verghese v. Bank of Cochin*, AIR 1980, it was held by the Supreme Court that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is a violation of Article 21 of the Constitution.

**Article 12-** provides freedom of movement and freedom to reside anywhere in the state and the right to travel to different countries. The Supreme Court in *Satwant Singh v. Assistant Passport Officer, New Delhi*, AIR 1967, SC 1836, held that the right to go abroad is a part of the ‘personal liberty’ within the meaning of Article 21 of the Constitution, and consequently, no person can be deprived of this right except according to procedure established by law. Again, in *Maneka Gandhi v. Union of India*, AIR 1978, 597, the Supreme Court upheld the decision of *Satwant Singh*’s case, the court held that no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure.

**Article 14-** ensure that every individual is equal before the law. And every individual has the right to a fair trial, conducted by an independent and impartial tribunal. The article also provides that the press or public may be excluded during the trial for maintaining morals, public order and security. Article 20 of the Indian Constitution strongly supports the idea of fair trial, so that every individual gets the opportunity to be heard.

**Article 18 and 19-** establishes freedom of religion. Article 19 of ICCPR provides freedom of speech and expression. In *Secretary Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal, 1995*, the Supreme Court held that right to impart and receive information is a species of the right to freedom of speech and expression.

**Article 21 and 22** – states that every individual has the right of peaceful assembly and shouldn't be restricted to enforce their rights until and unless it is in conformity with the law and doesn't disturb the public order and security of the society. Similarly, Article 22 states that every person has the right to form an association and join trade union, again it should be in conformity with law and shouldn't violate the rights of others.

There are different rights mentioned under ICCPR which are similar to the rights provided in the Indian Constitution, and they are:

- Equality of Opportunity to public service- Article 25(c)
- Right to move freely within the territory of a state- Article 22(1)
- Protection in respect of conviction of offences- Article 15(1)
- Protection from prosecution and punishment- Article 14(7)
- Not to be compelled to testify against himself- Article 14(3) (g)

## **COMPARISON BETWEEN UDHR AND ICCPR**

UDHR and ICCPR are considered as essential documents when it comes to Human Rights. There are similarities between UDHR and ICCPR, for example, they consist of similar rights like right to life, liberty, freedom of speech and expression, etc. Some differences can also be found between UDHR and ICCPR. The first and the most apparent difference is that UDHR is not legally binding but ICCPR binds each of its signatory countries legally to the covenant, violation of the rights under the covenant is a punishable offence. ICCPR is the most comprehensive document as compare to UDHR. UDHR touches every aspect of human rights

but ICCPR mostly focuses on civil and political rights. However, irrespective of the fact that whether there are similarities between the two or not, or whether one is overlapping the other, we can't deny that these rights are immensely important, not just in our present situation but also for our better future.

### **OPTIONAL PROTOCOLS TO ICCPR**

There are two optional protocols to the International Covenant on civil and Political Rights. The first Optional Protocol was enforced on 23 March 1976 by May 2020 it had 35 signatories and 116 states parties. The aim of forming this protocol was to act as a complaint mechanism which would record and address the complaint of individual whose rights under the Covenant has been violated. Committees were set up to address the issues and provide suitable solution within 6 months to the relevant parties. The second protocol to the ICCPR focuses on abolition of the death penalty. The parties to the second Optional Protocol have expressed their view that the abolition of the death penalty contributes to the enhancement of human dignity and progressive development of human rights.

### **DIFFERENCE BETWEEN ICCPR AND ICESCR**

Important Differences between ICCPR and ICESCR are given below:

#### ICCPR:

1. ICCPR represents and protects the human rights of first generation.
2. It explains human rights pertaining to cultural and political rights (i.e. not to torture, not to show discrimination, etc.).
3. The rights incorporated in ICCPR are negative in character just like the provisions in the penal code of a municipal law. The Indian Penal Code defines and narrates different offences, which are prohibited. In the similar way ICCPR defines and narrates certain things not supposed to be done by the States.
4. The judicial remedies are provided to the aggrieved persons, in cases their civil and political rights are violated by the State. The aggrieved person can claim before the Central Human Rights Commission, Human Right Court, State Human Right Commission or other domestic tribunals.

5. The provisions of ICCPR are similar to the provisions of Fundamental Rights in the Indian Constitution, violation of which gives rise to judicial remedies.

ICESCR:

1. ICESCR represents and protects the human rights of 'second generation'.

2. It explains human rights pertaining to economic, social and cultural rights (e.g. to provide adequate housing, trade unions social security, medical facilities, etc.).

3. The rights incorporated in ICESCR are positive in character. It shows the ways to the State to implement certain programmes to uplift the living standards of human beings and to protect the human culture. These are similar to the Directive Principle of State Policy (Part- III) of our Constitution.

4. There is no scope of judicial remedies. (There is no scope of judicial remedies in case of Directive Principles of State Policy of our Constitution. The Court cannot force the State to implement the provisions of part-IV.)

5. The provisions of ICESCR are similar to the provisions of the Directive Principles of State Policy in the Indian Constitution, non- implementation of which cannot give rise to judicial remedies.