

BE THE CLASSROOM SERIES

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Introduction to Civil and Political Rights

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The topic

Covers a basic understanding of civil and political rights. The focus is on the International Covenant on Civil and Political Rights [ICCPR]. The ICCPR, the UDHR and the ICESCR are referred to as the International Bill of Rights.

Civil and political rights are important to individuals and groups all over the world. The ICCPR is an important document for it provides a set of standards for States and the international community to implement.

The slides cover the important provisions of the ICCPR, state responsibility under ICCPR, functions and role of Human Rights Committee, and specific rights including right to life, right against torture, and right to free & fair elections.

The Optional Protocol and other areas under ICCPR will be covered separately.

Note: Also see slides on the *Three Generations of Human Rights*, and *Introduction to Economic, Social and Cultural Rights*.

Points for Discussion

1. About civil & political rights
2. The International Covenant on Civil and Political Rights [ICCPR]- Preamble
3. State responsibility- Article 2
4. Specific Rights
5. Important Concepts
6. Committee under ICCPR- Human Rights Committee
7. Implementation of ICCPR
8. Right to life
9. Right against Torture
10. Right to participate in public affairs & vote
11. Debates
12. Important Questions
13. Final points

About Civil and Political Rights

- ▶ Civil & Political Rights can be found in **legal/political documents** including the UDHR, ICCPR, and national constitutions [e.g. Indian Constitution].
- ▶ Civil and political rights include a **catalogue of rights** governing the relationship of individuals and groups in the social and political spheres.
- ▶ The rights include a set of **guarantees against arbitrary** interference and abuse of power.
- ▶ Civil and Political rights **include** the right to family, privacy, right against arbitrary arrest and torture etc.
- ▶ Civil and political rights provide duties for the state including;
 - a. to make **adequate laws, policies** for the implementation of rights.
 - b. Provide **adequate mechanisms** for dealing with violations of rights.
- ▶ *Civil rights legally protect individuals or groups from certain forms of oppression...Civil rights provide legal support for basic concepts of human dignity and respect for groups & individuals. Also considered **necessary element** of democracy, freedom, and equality. [Kairys].*

ICCPR

[Preamble]

Preamble –

- ▶ INHERENT DIGNITY- recognition of the ***inherent dignity*** and of the *equal and **inalienable rights*** of all members...
- ▶ UNIVERSAL RESPECT- Obligation of States under the Charter of the United Nations to *promote **universal respect for, and observance of, human rights** and freedoms...*
- ▶ DUTIES- Realizing that the individual, having ***duties to other individuals*** and to the community to which he belongs, is under a ***responsibility to strive*** for the promotion and observance of the rights recognized...

State responsibility [Article 2]

Each State party;

- ▶ To undertake necessary steps, in accordance with its **constitutional processes...**, to *adopt such laws or other measures as may be necessary* to give effect to the rights recognized in the present Covenant.
- ▶ To ensure to all individuals within territory the civil and political rights **without distinction** of race, color, sex, language etc.
- ▶ To ensure **remedies are available** in case of violations of rights.
- ▶ Duty to **protect, promote, fulfil.**
- ▶ To send **periodic reports to Committee** under ICCPR on how the rights are being implemented.

The primary duty bearer under the ICCPR is the state.

Specific rights

- ▶ Article 6- right to life
- ▶ 7- right against torture
- ▶ 8- prohibition of slavery
- ▶ 9- Freedom from arbitrary arrest and detention
- ▶ 10- persons deprived of liberty to be treated with humanity
- ▶ 14- fair and public hearing
- ▶ 17- right to privacy, reputation, family
- ▶ 18- Freedom of religion
- ▶ 22- freedom of association
- ▶ 25- Right to take part in public affairs
- ▶ 27- right to culture

Important Concepts

- ▶ **Obligation to Fulfil** requires states requires state to provide directly or by providing assistance (legislative, administrative, budgetary, judicial, or other measures).
- ▶ **Obligation to Respect** – requires state to refrain from interfering directly or indirectly from enjoyment of the rights.
- ▶ **Obligation to Protect-** requires state to prevent third parties from interfering with enjoyment of right.
- ▶ **Constitutional processes-** includes implementation of rights through national laws/policies. Implementation in accordance with principles of rule of law, dialogue, participation and good governance.
- ▶ **Other measures-** including reasonable steps towards the rights in the ICCPR.

Committee under ICCPR- Human Rights Committee

- ▶ The Human Rights Committee is the treaty body set up under the ICCPR.
- ▶ It has the following functions;
 - **Monitoring** - Reviews country reports submitted by state parties,
 - Can receive and consider inter-state communications.
 - **Remedies**- Consider individual complaints against violations.
 - **Interpretation**- Issues general comments defining the content of rights and obligations of parties
 - **Dialogue**- organize discussions on important themes
 - **Guidance**- giving assistance and encouragement to states
- ▶ Human Rights Committee has **defined and elaborated on** several human rights including the right to life, right against torture , abortion rights , right to security of person, freedom of opinion and expression, right to privacy and home, right to humane treatment of persons deprived of liberty , voting rights, rights of minorities , right to marriage and equality of spouses , and rights of the child.

Implementation of ICCPR

- ▶ **Reporting mechanism** is the key mechanism for monitoring the implementation of rights by states parties. (other mechanisms are provided in the Optional Protocol to ICCPR).
- ▶ State reports must specify inter alia,
 - *Framework including **law, policy and strategies*** adopted for each ICCPR right;
 - **Mechanisms in place** to monitor progress of realization of ICCPR rights;
 - **Available judicial** and other remedies.
- ▶ While considering reports, the HRC sets out the achievements, factors affecting implementation of the covenant; key areas of concern; and suggestions and recommendations.
- ▶ While not binding, the recommendations of the HRC are seen to have influenced discussions at the national level, legislative process, as well as on policy and administrative practice
- ▶ Under the Optional Protocol, the Committee admits complaints from individuals against **violations committed by State**. Over the years there has been an increase in the number of complaints before the Committee.

Right to life

According to HRC, Article 6 on right to life;

- ▶ Should not be interpreted narrowly.
- ▶ Not absolute.
- ▶ Is crucial to individuals and society.
- ▶ Is a guarantee for all human beings, without distinction of any kind including persons suspected or convicted of crimes.
- ▶ Obligates states to exercise due diligence to protect the lives of individuals against derivations caused by persons or entities.
- ▶ Obligates states to take measures to prevent arbitrary deprivations.
- ▶ Obligates states to protect right to life through laws and provide criminal prohibitions on all forms of violence, violent hate crimes, unlawful detention etc.
- ▶ Obligates states to take measures to protect individuals against by foreign corporations and other organizations.
- ▶ Obligates state to refrain from deporting or transferring individuals to countries where they maybe at risk to life.
- ▶ Also, right to life overlaps and is related with other human rights including right against torture, right to environment, right against enforced disappearances.

[See Report for details. Human Rights Committee , 2018]

Right against torture

Right against torture;

- ▶ Protects the **physical and mental** integrity of the individual.
- ▶ Ensures individuals detained by state to be treated with **dignity** and not be subjected to any hardship.
- ▶ Right applies regardless of whether the acts were done by **public officials or private persons**.
- ▶ State has a **positive duty to protect persons** under its jurisdiction from acts of private individuals.
- ▶ Guarantees individuals the right to **make complaints** against acts violating rights. All complaints must be **investigated in a timely** and impartial manner.
- ▶ Obligates states to have adequate laws to punish acts of torture and ill-treatment.

[For further details- HRC Reports/Cases]

Right to participate in public affairs & vote

- ▶ Article 25 lies at the **core of democratic government** based on the **consent of the people**.
- ▶ Citizens participate in the conduct of public affairs through **freely chosen representatives**.
- ▶ Citizens also take part in the conduct of public affairs by exerting influence through **public debate and dialogue**.
- ▶ The right to vote at elections must be established by law and maybe subject only to **reasonable restrictions**.
- ▶ States must take effective measures to ensure that all persons entitled to vote are **able to exercise the right**.
- ▶ Voters should be able to form opinions independently , **free of violence or threat of violence**, compulsion or manipulation.
- ▶ Freedom of expression, assembly and association are **essential conditions** for the effective exercise of right to vote and must be fully protected.

For details see- **General Comment No. 25 –
Human Rights Committee**

Debates

Two of the many notable debates;

- ▶ **Negative Rights-** Civil and Political rights are said to be negative rights **requiring restraint and non-interference** from the State [In comparison to Economic, Social, and Cultural Rights].

The understanding has been challenged, leading to the adoption of duties of the state to **fulfill and provide** for civil and political rights. All human rights require action and reasonable measures from state towards them.

- ▶ **Reasonable Restrictions-** The discussion on whether the restrictions imposed on civil and political rights are **reasonable** is an important one. The constant engagement with the state on limits to human rights can be seen in context of the right against torture, guarantees under detention laws, and the right to peaceful assembly.

Important Questions

- ▶ Under what conditions can civil & political rights be restricted or curtailed?
- ▶ How has globalization influenced civil and political rights?
- ▶ Are rights under the ICCPR related to the rights under ICESCR?
- ▶ What steps taken by the state can qualify as *reasonable measures*?
- ▶ Can there be uniform standards pertaining to human rights related to family and privacy?
- ▶ Are civil and political rights also protected against actions of non-state entities?

Final Points

- ▶ The ICCPR aims to address **the vulnerabilities** of different groups including children and women.
- ▶ The ICCPR covers rights of **individuals and groups**.
- ▶ State is **obligated to amend laws** which are discriminatory and in violation of civil and political rights.
- ▶ Civil and political rights come with **duties of both action and restraint** on the part of the state.
- ▶ Both the ICCPR and ICESCR **are governed by principles** of non-discrimination ,interdependency, access to justice for violations.
- ▶ Rights within ICCPR are **interdependent and indivisible**. E.g. freedom of speech is essential to the right to vote, right to information, and freedom of association.
- ▶ Existing rights are **influenced by factors** including technological developments, climate change, globalization etc.