

BE THE CLASSROOM SERIES

**In Focus: Author & Subject Expert:
ECONOMIC AND SOCIAL RIGHTS**

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About

Dr. Ramachandran has been closely guiding the making of an exclusive Economic & Social Rights Page on BE THE CLASSROOM SERIES website.

Dr. Ramachandran has her Ph.D. thesis on Justiciability of Social and Economic Rights: A Comparative Study of India and South Africa.

In her thesis, she traces the growth of the economic and social rights frameworks in India and South Africa, comparing the Constitutional and statutory frameworks, and how they have been shaped through the interpretations placed on them by the constitutional courts in the two countries. The constitutional mandate in both countries as justiciable rights under the South African Constitution and non-enforceable directive principles under the Indian Constitution has been translated by the respective legislatures into specific statutes on different socioeconomic rights, placing specific responsibilities on different functionaries, and in the case of India, providing remedies to affected persons. In the context of prevailing circumstances and the needs of the respective countries, the courts have taken a cautious/deferential approach in South Africa, while a more activist one in India. Consequently, in India, even unenumerated rights such to food, shelter, and water (which do not find express mention even in the directive principles) have been read into the right to life, without which expanded interpretation, the right would scarcely have meaning for rights-holders. However, a fixed set of specific standards for review across cases of socioeconomic rights are lacking in the Indian context, though the South African judiciary has developed the standard of 'reasonableness' also now adopted under OP-ICESCR.

She is currently working on the approaches adopted under the international and domestic systems to address the COVID-19 effects on ESC rights. Also, the use of interim measures by the ICESCR Committee under the Optional Protocol so as to ensure that the individual communications mechanism under the protocol can effectively protect the rights of complainants.

Contributions

In her contributions, Dr. Ramachandran has covered the developments at the international, regional and domestic levels. She has closely observed the gaps in compliance with exiting standards on State responsibility and the specific mandates issued to specific states under the monitoring and complaints mechanisms. Herein are a few sub-themes that she writes on, defining the scope of her research on the subject;

1. The importance of state membership to the existing ESC human rights frameworks, including the ICESCR- Optional Protocol.
2. The interlinkages between ESC human rights frameworks like ICESCR and other agendas including corruption, climate change & resource scarcity.
3. The collaborations between treaty bodies and the Outcome Statements on key agendas across treaties.
4. The visible impact of deliberations and adopted statements by UN treaty bodies on domestic laws while dealing with ESC rights.
5. The growing use of constitutional processes and mechanisms by courts in order to *follow up* on orders for enforcement of ESC rights within domestic systems.
6. The use and application of influential concepts including “minimum core” by the ICESCR Committee and domestic courts to define the non-derogable obligations of states.
7. The expansion in *procedural protections* as non-derogable mandates for the state while making and enforcing its laws.
8. The codification of concepts and standards adopted by the ICESCR Committee in domestic statutes and constitutions.
9. The collaboration across UN treaty bodies and other groups and mechanisms including UPR and Human Rights Council.
10. The growing direct involvement of the Committee under ICESCR in the making of national laws, and through enquiries into alleged violations.

Specific Works

[available at www.betheclassroomseries.com]

*** CHALLENGES IN THE IMPLEMENTATION OF ECONOMIC, SOCIAL & CULTURAL RIGHTS: CESCR JURISPRUDENCE**

In this paper Dr. Ramachandran discusses two challenges that have troubled the CESCR Committee.

First, limited state membership to the ICESCR Optional protocol and the enforcement mechanism provided therein. [in comparison to its counterpart Covenant on Civil and Political Rights [ICCPR, as well as the total membership to the ICESCR]. The concerns over limited membership has been viewed as a major impediment to the promotion and enforcement of the rights under ICESCR. The paper brings forward for discussion the differences in approaches and receptivity to the ICESCR and the ICCPR framework.

Second, factors such as climate change, corruption, and financial scarcity. The paper looks at the Committee's works on the above impediments. While engaging with the states, the Committee has allowed for a more grounded approach to viewing the enforcement of ESC rights to conditions such as corruption and climate change. The paper brings forward for discussion the expansion of the Committee's mandate and working across agendas and frameworks. She cites the Committee's Concluding Observations for Ukraine (2020), Kazakhstan (2019), Cameroon (2019) , Cyprus (2016), Mali (2018)

*** INTRODUCTION TO ICESCR OPTIONAL PROTOCOL [OP-ICESCR]**

The document was prepared by Dr. Ramachandran with Dr. Deepa Kansra. The work is part of the on-going works on the importance and working of Optional Protocols to Human Rights Treaties. The document summarily traces the developments which preceded the adoption of the OP- ICESCR and the objectives outlined by the Working Group in this regard.

Much emphasis is placed on the standards adopted case by case by the ICESCR Committee on the admissibility and determination of claims by victims of violations. Also, the standards used for determining violations under the ICESCR, the threshold indicators, processes and procedural requirements.

On the core of the OP's functions, the jurisprudence of the ICESCR Committee on remedies for grave and systemic violations of the ICESCR. The more specific standards that have been critical for the functioning of the ICESCR Committee have been discussed including; retrogressive measures, the reasonable standard applied by the

Committee, the domain of un-enumerated rights, the extra-territorial obligations of state, the acceptability and quality dimensions of ESC rights, and third party interventions in the proceedings before Committee.

The document also presents the scope for further study and review of the developments under the OP-ICESCR; 1. View the evolution & expansion of ESC rights in light of the mechanisms under the OP-ICESCR. 2. Study the direct and indirect impact of the CESCJ jurisprudence on courts having domestic & regional jurisdictions. 3. Study the influence of CESCJ Jurisprudence on the works of other human rights treaty bodies. 4. Study the impact of CESCJ Recommendations on other UN mechanisms including Universal Periodic Review, Special Rapporteurs. 5. Ascertain the emphasis given to data and quantitative details of rights under the ICESCR- OP mechanisms. 6. Study the significance of the OPERA Framework for ICESCR, designed to combine the quantitative & qualitative data on ESCR. 7. Study the procedural and other factors that limit the access to the OP-ICESCR mechanism by victims of ESC rights violations. 8. Compare statistics on cases under the OP-ICESCR and under other Optional Protocols of human rights treaties. 9. Study the emerging CESCJ jurisprudence in light of COVID-19.

*** DOMESTIC LAW AND THE CORE OBLIGATIONS UNDER ICESCR: SPECIFIC REFERENCE TO INDIA**

The paper highlights to notable developments in the domain of ESC rights. First, the codification of standards and concepts used by the ICESCR Committee. Second, the use and influence of domestic standards in the working for ICESCR framework.

The paper looks at the universal influence of the concept of *minimum core* has had. The wide use of the concept is visible, with clear indication of lack of uniformity across jurisdictions. Also, the typology of respect-protect- fulfil which has re-defined the overall mandate of states. The paper cites the Humans Rights Act, 2004 of the Australian Capital Territory which in its subtitle says, 'an Act to respect, protect, and promote human rights'. Also, respecting, promoting, and protecting human rights expressed as a duty of the National Human Rights Commission under the Nepalese Constitution of 2015.

The paper also highlights the recognition and use of *procedural protections* such as provision for adequate notice and open consultation in the working of the state. In case of India, in particular, the use of the ICESCR Committee concepts by courts while dealing with forced evictions, right to standard of living, right to medical treatment etc, has been highlighted. In addition, references to the ICESCR Committee was seen in the Law Commission of India Report [223rd Report on *Need for Ameliorating the Lot of the Have Nots*] while discussing conditions of poverty.

*** THE 'FUNDAMENTAL' STATUS OF ECONOMIC AND SOCIAL RIGHTS IN THE INDIAN CONSTITUTION**

The author makes some beautiful observations in the paper. The provisions and growth of ESC rights based standards under the Indian Constitution has been viewed in light of the international developments under the ICCPR and ICESCR.

In the paper, four notable factors have been highlighted;

First, the consistent effort of the Indian courts to elevating the status of economic and social rights as being fundamental under the Indian Constitution.

Second, the gradual recognition of little discussed or elaborated economic and social rights including right to social security and livelihood.

Third, the use of constitutional writs like mandamus for the continuous observation and follow-up of measures taken towards economic and social rights.

Fourth, the non-availability of clear standards for judicial review of laws dealing with the rights.

Lecture Slides

*** INTRODUCTION TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

The lecture slides prepared with Dr. Deepa Kansra cover an introduction to the nature of ESC rights and the important provisions under the ICESCR. The lecture include a discussion on key concepts including “minimum core”, “progressive realisation”, “respect-protect-fulfil”. Also, the ICESCR Committees general comments on specific rights including right to food, right to sexual and reproductive health, right to education etc.

With an introduction to the leading debates on the ESC rights, the lecture also opens up the following questions for further study by the students; 1. To what extent the economic capacity of states influences their work towards ESC human rights? 2. What is the role and involvement of corporations and individuals in the realization of ESC rights? 3. What are the non-economic challenges to ESC rights? 4. What is the role of the international community towards ensuring fulfilment of ESC rights? 5. How to assess if resources are being used to the maximum for ESC rights ? 6. As all human rights are equally important in ensuring a life with dignity, and ESC rights seek to ensure the basic necessities for even survival, is the distinction sought to be drawn between CPR and ESCR valid?

*** ECONOMIC AND SOCIAL RIGHTS UNDER THE INDIAN CONSTITUTION**

The lecture slides prepared with Dr. Deepa Kansra cover a broad understanding of the status of social and economic rights under the Indian Constitution. The lecture is divided into three parts;

Part I- Nature & Status under Indian Constitution covers the provision for social and economic rights under the Constitution. It covers the directive principles of state policy & relevant provisions, nature of state responsibility, and changing approaches to the rights.

Part II- Constitutional Law & Socio-economic rights covers the relationship between fundamental rights and directive principles of state policy, the related approaches/themes, specific socio-economic rights recognised by interpretation under Part III, public interest litigation, and a few pieces of legislation and schemes adopted for the enforcement of the rights.

Part III - India and UN Mechanisms covers country specific reports [India] submitted by UN Special Rapporteurs for water, sanitation and housing. The reports discuss the status of social and economic rights, the achievements and priority areas including proposals for promulgation of central laws on water, sanitation, and housing in India.

The lecture concludes with a set of points for discussion and study by the students. 1. The practice of discrimination in the provision of socioeconomic rights and benefits. 2. The need for adequate legislation ensuring all facets of basic needs, at the least for the deprived sections of society. 3. The role of state and local governments in implementing laws and policies. 4. Effectiveness of judicial decisions in terms of actual realisation of socio-economic rights for people. 5. Mandatory requirement for impact assessment of state & other projects and plans 6. Coordination & Cooperation with UN human rights mechanisms and other organizations, and 7. Emphasis on achieving availability, accessibility, affordability & acceptability of socio-economic rights .

