

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 5 | Issue 5**

---

**2022**

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# The Principle of Non Discrimination as a Vehicle for the Protection of Economic, Social and Cultural Rights

---

PRIYANSHI SODANI<sup>1</sup> AND ASHWARYA SHARMA<sup>2</sup>

## ABSTRACT

*International human rights law places a lot of emphasis on economic, social, and cultural rights. By ratifying the International Covenant on Economic, Social and Cultural Rights, the States are obliged to protect the economic, social, and cultural rights of the individuals. This paper analyzes the need to protect these rights and the role international instruments play in conserving them. It further discusses the nature of obligations that the ICESCR puts on the State parties. It also provides the grounds of discrimination that are prohibited under the ICESCR. This paper further tries to establish a link between the economic, social and cultural rights and the Constitution of India and analyzes their fundamental status in our nation. Socio-economic rights are not explicitly mentioned in the Indian Constitution as fundamental rights, but they are included in the Directive Principles of State Policy, which means that the Directive Principles of State Policy consider socio-economic rights to be important and mandatory for the state to take into account when drafting laws for the nation. Several Articles, including 21, 39(a), 41, 45, and 37, provide instances of these rights. The authors have tried their best to focus upon articles relating to cultural rights, which include, Articles 21, 29, 30, 43 and 51A.*

**Keywords:** Cultural, Discrimination, Economic, Fundamental, Obligations, Social.

## I. NEED FOR PROTECTION OF ESCR

International human rights law places a lot of emphasis on economic, social, and cultural rights. They are fully protected under international human rights legislation and by the world community.

Despite receiving less attention than civil and political rights, these rights are currently receiving far more serious scrutiny than ever before. The issue is not whether these rights are fundamental human rights or not, but rather what obligations they place on States to protect them under international law. Economic, social, and cultural rights are intertwined<sup>2</sup> and indivisible from civil

---

<sup>1</sup> Author is a student at Narsee Monjee Institute of Management Studies, Indore, India.

<sup>2</sup> Author is a student at Narsee Monjee Institute of Management Studies, Indore, India.

and political rights. Civil and political rights cannot be meaningfully enjoyed without the realization of economic, social, and cultural rights.

### **(A) Role of International Instruments**

Economic, social, and cultural rights are acknowledged in a number of international documents as essential components of the human rights framework. The Universal Declaration of Human Rights (UDHR) is the first substantial international document that covers both sets of rights, i.e., civil and political rights and economic, social, and cultural rights. As far as economic, social, and cultural rights concerned, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) remains the most important document. The right to self-determination, equality for men and women, the right to work and favorable working conditions, the right to form and join trade unions, the right to an adequate standard of living, including access to food, clothing, and housing, the right to health and healthcare, the protection of the family, and the right to social security are all recognized in ICESCR.

The ICESCR was adopted by the UN General Assembly on 16 December, 1966. It entered into force on 03 January, 1976. As of July 2020, the Covenant has 171 parties to it. It comprises of 31 articles and 5 parts, covering a wide spectrum of rights. Part I identifies the right of peoples to self determination; Part II recognizes the general nature of States parties' obligations; Part III acknowledges the substantive rights; Part IV contains international implementation; and Part V covers typical final provisions of a human rights treaty.

## **II. NATURE OF STATE OBLIGATIONS**

By ratifying the ICESCR, the States have committed to upholding the international legal duties they have undertaken. The State Parties to the ICESCR are required by Article 2(1)<sup>3</sup> to progressively implement the rights that it provides. The Government is required by Article 2(2)<sup>4</sup> to make sure that everyone has access to these rights without discrimination.

In the Covenant, there is an explicit and pervasive commitment to refrain from discrimination. Each of the economic, social, and cultural rights guaranteed in the Covenant must be exercised without prejudice, according to Article 2(2), which can only be used in conjunction with these rights. It should be noted that discrimination is defined as any distinction, exclusion, restriction, preference, or other differential treatment that is directly or indirectly based on one of the prohibited grounds for discrimination and that has the intention or effect of preventing someone

---

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights, Art. 2(1)

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights, Art. 2(2)

from enjoying or exercising their Covenant rights equally.

Discrimination must be eradicated both formally and substantively for States parties to "ensure" that the Covenant rights would be exercised without any form of discrimination.

- Formal discrimination: Making sure that a State's constitution, laws, and policy documents do not discriminate against people on unlawful grounds is necessary to end formal discrimination.

- Substantive discrimination: The effective exercise of Covenant rights is frequently impacted by a person's belonging to a group that is subject to the proscribed forms of discrimination. Instead, than only comparing the formal treatment of people in similar circumstances, eliminating discrimination in practice entails paying enough attention to groups of people who experience historical or ongoing prejudice. Therefore, States Parties shall therefore once take the necessary steps to prevent, curtail, and eradicate the situations and behaviors that result in or sustain actual or implied discrimination.

States parties may be, and in some cases are, required to adopt specific measures to lessen or suppress circumstances that encourage prejudice in order to eradicate substantive discrimination. Such actions are legal so long as they serve as fair, reasonable, and proportionate tools to address de facto discrimination, and they must be stopped once substantive equality has been attained sustainably. According to Article 2(2) of the Covenant, both direct and indirect types of discriminatory treatment might constitute discrimination.

Failure to act in good faith to ensure that the rights outlined in the Covenant, are exercised without discrimination in accordance with Article 2(2), constitutes a breach under international law. States parties, including through their institutions or agencies at the national and local levels, are capable of directly violating covenant rights by their actions or inactions. States parties should take steps to guarantee that all actors operating under their jurisdiction refrain from discriminatory practices in international cooperation and aid as well as make sure that they themselves do the same.

### **III. RESTRICTED GROUNDS OF DISCRIMINATION UNDER ICESCR**

Discrimination is prohibited by a number of human rights laws. Article 2<sup>5</sup> of the Universal Declaration of Human Rights forbids discrimination on the following ten grounds:

1. national or social origin,
2. property,

---

<sup>5</sup> Universal Declaration of Human Rights, Article 2

3. birth,
4. sex,
5. language,
6. political or other opinion,
7. race,
8. color,
9. birth, or
10. other status.

The same forbidden reasons are covered by Article 2<sup>6</sup> of the ICCPR. Similar to the ICCPR, Article 2<sup>7</sup> ACHPR specifies the same forbidden grounds, however the ACHPR forbids discrimination on the basis of "wealth" rather than "property." At the Inter-American level, Article 1(1)<sup>8</sup> ACHR adds "economic status" to the list of criteria for which discrimination is prohibited. The phrase "or other status" is ambiguous; hence, some factors that aren't specifically stated but could be grounds for discrimination include age, a disability, nationality, and sexual orientation. Article 26<sup>9</sup> of the ICCPR, which guarantees the "right to equality before the law and to the equal protection of the law," has been given a separate interpretation by the Human Rights Committee, indicating that it is not required to specify a particular basis for discrimination.<sup>10</sup>

#### **IV. FUNDAMENTAL STATUS OF ESCR IN INDIAN CONSTITUTION**

In contrast to the guarantee of civil and political rights in the Indian Constitution, economic, social, and cultural rights are recognized as Directive Principles of State Policy, which are meant to guide government policy but are not immediately enforceable in courts. The Directive Principles have been elevated to the status of constitutional rights in India through the gradual development of economic, social, and cultural rights law by the judiciary, using the Directive Principles as guides for the interpretation of civil and political rights protected by the Constitution. In order to defend particular economic and social rights, such as the right to adequate nutrition, clothing, and shelter, the right to medical facilities, the right to earn a living, and environmental rights, the Indian Supreme Court has adopted an expansive interpretation of the constitutional right to life that is based on principles of human dignity.

---

<sup>6</sup> International Covenant on Civil and Political Rights, Article 2

<sup>7</sup> African Commission on Human and Peoples Rights, Article 2

<sup>8</sup> American Convention on Human Rights, Article 1(1)

<sup>9</sup> International Covenant on Civil and Political Rights, Article 26

<sup>10</sup> *Kavanagh v. Ireland*, (Communication No. 819/1998, Views of 4 April 2001)

In the *Olga Tellis* case<sup>11</sup>, the right to livelihood meant that the state had a responsibility to provide a group of pavement dwellers with procedural rights to a fair hearing because their eviction jeopardized their ability to support themselves. Beyond procedural rights, the Supreme Court ruled in *Paschim Banga Khet Mazdoor Sabha v. State of West Bengal*<sup>12</sup>, that the State may also be required to give additional resources, such as resources to provide basic healthcare services, in order to uphold economic and social rights.

### **(A) Socio-Economic Rights**

Socio-economic rights, also referred to as social rights, include the right of individuals to access basic human rights. The expression 'social-economic rights' have not been expressly used in the Constitution but as far as the elements required for socio-economic rights are considered, they can be outlined in Part IV of the Constitution of India from Article 35 to 51, as Directive Principles of State Policy.

The fundamental character of social-economic rights is still up for debate because DPSPs are not recognized as rights that can be enforced in a court of law. DPSPs can be thought of as guiding principles for the nation's governance and must be taken into consideration by the state when drafting any national laws.

According to Article 39(a)<sup>13</sup>, the state should frame policy in order to ensure that men and women have equal rights and means of livelihood, and Article 41<sup>14</sup> states that the state should implement effective provisions to ensure that individuals are entitled to the right to work, to education and public assistance in an event of illness, disability, old age, and unemployment, while remaining within the bounds of its economic capacity.

The clauses in Article 37 cannot be enforced in a court of law, but the text of the provisions, however, makes it apparent that these articles are not intended to be legal rights or entitlements. The rights specified under Articles 37 and 41 are acknowledged 'political rights.'

Likewise, the Supreme Court has addressed Article 21<sup>15</sup> of the Constitution, in correspondence with the Directive Principles relating to education, health, and employment conditions, to address the working conditions of child laborers in a carpet industry.

### **(B) Cultural Rights**

Contrary to economic and social rights, cultural rights do not clearly fit into the "Fundamental

---

<sup>11</sup> *Olga Tellis & Ors. V. Bombay Municipal Council* (1985) 2 Supp SCR 51

<sup>12</sup> *Paschim Banga Khet Mazdoor Sabha v. State of West Bengal*, 1996 SCC (4) 37

<sup>13</sup> Constitution of India, Article 39(a)

<sup>14</sup> Constitution of India, Article 41

<sup>15</sup> Constitution of India, Article 21

Rights" and "DPSPs." However, the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social, and Cultural Rights" provide protection for them on a global level.

This is because certain features of culture, like defending minority cultural practices, are regarded as civil rights, while certain aspects, including positive governmental obligations, are categorized as economic and social rights. Cultural rights are found in both Parts III and IV of the Constitution of India because the framers adopted a similar strategy.

Article 29(1)<sup>16</sup> of the Constitution guarantees the right to preserve a language, script, or culture to "any section of citizens." It ensures that minorities have the freedom to defend and preserve their culture. Article 29(2)<sup>17</sup> guarantees protection against discrimination based on religion, race, caste, or language and safeguards the equality of citizens.

Article 30<sup>18</sup> protects the freedom to promote one's own culture and language by allowing cultural and linguistic minorities to create and run their own educational institutions. Article 30(2)<sup>19</sup> forbids the government from withholding public funds or aid from minority educational institutions, ensuring equal protection in field of education.

Article 43<sup>20</sup> obliges State to ensure that all workers have access to social and cultural opportunities. Indian nationals are duty bound by Article 51A(f)<sup>21</sup> to respect and preserve diverse cultural heritage of the nation. Hence, the DPSP's impose responsibility, on individuals and State, both, for preserving and promoting India's cultural heritage.

## **V. CONCLUSION**

From the aforementioned analysis, it can be concluded that even though there are basic living standards and human rights, it is crucial to recognize those rights as a fundamental tenet of governance. It is indisputable that second generation rights go beyond your basic human needs, and acknowledging such requirements is crucial in today's generation. Socio-economic rights are not explicitly mentioned in the Indian Constitution as fundamental rights, but they are included in the Directive Principles of State Policy, which utilizes the expression right. This means that the Directive Principles of State Policy consider socio-economic rights to be important and mandatory for the state to take into account when drafting laws for the nation.

---

<sup>16</sup> Constitution of India, Article 29(1)

<sup>17</sup> Constitution of India, Article 29(2)

<sup>18</sup> Constitution of India, Article 30

<sup>19</sup> Constitution of India, Article 30(2)

<sup>20</sup> Constitution of India Article 43

<sup>21</sup> Constitution of India, Article 51A(f)

Several articles, including 21, 39(a), 41, 45, and 37, provide instances of these rights. As a result, the courts have taken an active stance in support of the rights outlined in DPSPs due to a strategy of being oblivious to the duties contained in the directive principles of the state policy and considered them to be fundamental in the country's governance. With this strategy, fundamental human needs have been reoriented into legal rights that may be upheld by the court. In general, each State should directly apply legally enforceable international human rights norms in their domestic legal system, allowing people to seek the enforcement of their rights.

\*\*\*\*\*

**VI. BIBLIOGRAPHY**

- 1) Jayna Kothari, 'Social Rights and the Indian Constitution', *Social Justice & Global Development Journal* (2004).
- 2) Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights, University of Minnesota.
- 3) 'Social and Economics Rights', Institute for democracy and electoral assistance (IDEA), (2014).
- 4) 'The principle of non-discrimination as a vehicle for the protection of economic, social and cultural rights', Icelandic Human Rights Centre.
- 5) Professor Christine Chinkin, 'The protection of economic, special and cultural rights post-conflict'.
- 6) Prof. Rehan Abeyratne, 'Economic, Social and Cultural Rights: Group/ Collective Rights', Pathshala, MHRD Product by Government of India.
- 7) Gitika Jain, 'Fundamental status of economic and social rights in the Indian Constitution, ipleaders (2020).
- 8) Jhuma Sen, 'Economic, Social and Cultural Rights: Indian Footprints at the Interational Level, Legal Service India.
- 9) 'Economic, Social and Cultural Rights', IGNOU, The People's University.

\*\*\*\*\*