UNIT 3  CIVIL AND POLITICAL RIGHTS

Structure

3.0  Objectives

3.1  Introduction

3.1.1  Codification of Rights

3.2  Civil and Political Rights

3.2.1  Adoption of the International Covenant on Civil and Political Rights

3.2.2  The Rights

3.2.3  Optional Protocols

3.3  Limitations on the Exercise of Rights

3.4  Implementation Mechanism

3.4.1  Functions of Human Rights Committee

3.4.2  The Emergency Procedure

3.4.3  Formation of General Comments

3.4.4  Inter-state Complaints Procedure

3.4.5  The Individual Communication Procedure

3.5  Importance of Civil and Political Rights

3.6  Let Us Sum Up

3.7  Answers to Check Your Progress Exercises

3.0  OBJECTIVES

This unit discusses the type and nature of Civil and Political Rights as these have been provided in the International Covenant on Civil and Political Rights. After going through this unit you will be able to know:

• the nature of International Covenant on Civil and Political Rights;
• the types of Rights provided by the Covenant;
• restrictions on the exercise of the Rights;
• the mechanism provided for monitoring the implementation of Rights; and
• the procedure to file complaints.

3.1  INTRODUCTION

International human rights regime has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. The right to live a dignified life can never be attained unless all basic necessities of life, namely, work, food, housing, health care, education and culture are adequately and equitably available to everyone. Based squarely on this fundamental principle of the global human rights system, international human rights law has established individual and group rights relating to the civil, cultural,
economic, political and social spheres. These however, have developed step by step. Therefore, they are also referred to as three generations of human rights. These are:

- First Generation Rights: civil and political rights;
- Second Generation Rights: economic, social and cultural rights;
- Third Generation Rights: solidarity rights (group rights)

The above mentioned rights have been placed in different International Conventions, Covenants, Declarations etc.

### 3.1.1 Codification of Rights

As has been explained in the earlier unit that the Universal Declaration of Human Rights (UDHR) was proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations and as the foundation of freedom, justice and peace in the world. Accordingly, the UDHR contained almost all types of rights: Civil, Political, Economic, Social, Cultural etc. At the same time the UDHR was a mere declaration and not a treaty imposing legal obligations on the states. International community, while looking for an International Bill of Rights was also interested in a set of rights and freedoms as a part of an international agreement as a treaty which would be legally binding on the states. Thus there emerged a process to establish Human Right Treaties. Since then a number of treaties known as International Covenants or conventions have been adopted. Seven of these covenants are known as core International Human Rights Treaties. These are called Core, as they are concerned with the most important aspects of Human Rights of individuals and groups and provide for the machinery for their monitoring. The Treaties are:

2. International Covenant on Civil and Political Rights (1966)
5. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

From among the above two treaties namely International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are considered most important. These two treaties along with UDHR constitute what is known as International Bill of Rights. Below we discuss the nature of Civil and Political Rights as described in the International Covenant on Civil and Political Rights. In subsequent units we will discuss about other conventions and covenants.
Understanding Human Rights

Check Yours Progress 1

1) What is known as Three Generations of Human Rights?

2) Which Human Rights Treaties are known as Core International Treaties?

3.2 CIVIL AND POLITICAL RIGHTS

Civil and Political Rights are often referred to as the “first generation” or “first dimension” of human rights, which distinguishes them from the economic, social and cultural rights as well as from collective or solidarity rights of the third generation. It is suggested that civil and political rights are the most important and lasting achievements of the American and French revolutions in the late eighteenth centuries and other democratic revolutions of nineteenth and twentieth centuries. These are based on rationalistic doctrine of natural law according to which human beings are born free and equal in dignity and inalienable rights. These rights and machinery to monitor them are contained in the International Covenant on Civil and Political Rights.

3.2.1 Adoption of the International Covenant on Civil and Political Rights

As already mentioned when the UDHR was adopted broad agreement already existed that the rights it contained should be translated into legal form as treaties, which would be directly binding on the states that agreed to be bound by its terms. In fact right from the time of the establishment of Human Rights Commission in 1946 extensive negotiations for formulation of such treaties began.

A milestone was reached on 16 December 1966, when the UN General Assembly adopted two covenants that is International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights. The drafting of the Covenants was a long and arduous process; while the Universal Declaration of Human Rights (UDHR) took only 18 months to complete, the two covenants took eighteen years. The value of these instruments is apparent: first, they defined more explicitly the scope and standards of those human rights which are considered fundamental and legally binding to the States which have ratified these treaties. Under international law a multilateral treaty is binding to
only a State, which has ratified the treaty, in simple meaning, has shown its willingness to make herself accountable to the treaty. ICCPR provides a mechanism for implementation of the rights contained. The ICCPR contains 53 articles. States are to respect and ensure those rights upon becoming the parties to the ICCPR. It is true that most of the substantive articles of the ICCPR define and amplify corresponding provisions in the UDHR.

The provisions of the ICCPR are explicit as to the rights to be protected and also places a positive obligation on States to ensure such protection. States have also an obligation to implement these articles, without distinction of any kind, such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status.

3.2.2 The Rights

The basic characteristics of ICCPR can be described as:

- The states freedom of action is limited, as the state is obliged to respect such rights;
- The rights primarily are individual in nature;
- All state’s have the responsibility to respect these rights, irrespective of the political system and level of development;
- They are justiciable, which means that a court or a tribunal is able to assess, if a violation has occurred.

Following rights are identified as civil and political rights under the International Covenant on Civil Political Rights in Articles 6 to 27:

1) Right to Life (Article 6)
2) Prohibition against Torture (Article 7)
3) Prohibition against Slavery (Article 8)
4) Right to Liberty and Security of person (Article 9)
5) Humane Treatment to persons who are deprived of personal Liberty (Article 10)
6) No one shall be arrested for failure of contractual obligations (Article 11)
7) Liberty of Movement and Freedom to Choose residence (Article 12)
8) Right to Aliens not to be expelled without the process in accordance with law (Article 13)
9) Equality before and equal protection of courts and tribunals (Article 14)
10) Non-retroactive application of laws (Article 15)
11) Right to Recognition as a person before the law (Article 16)
12) Respect to privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation of the individual (Article 17)
13) Right to freedom of thought, conscience and religion (Article 18)
14) Right to hold opinions without interference (Article 19)
15) Prohibition against propaganda for war shall be prohibited by law (Article 20)
16) Right of peaceful assembly (Article 21)
17) Right to freedom of association with others, including the right to form and join trade unions for the protection of interests (Article 22)
18) Right to family is the natural and fundamental group unit of society (Article 23)
19) Right to Child (Article 24)
20) Right to participate and vote in elections (Article 25)
21) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law (Article 26)
22) Right of Minorities (Article 27)

3.2.3 Optional Protocols

The International Covenant on Civil and Political Rights also has two optional protocols as supplements. These protocols contain further obligation for the states. However, these are optional and states are free to accept or not accept. Having accepted they become bound by them. The first Optional Protocol to the International Convention on Civil and Political Rights enables the Human Rights Committee, set up under the terms of that covenant to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. This was adopted along with ICCPR in 1966.

Under Article 1 of the Optional Protocol a state party of the Covenant that becomes a party to the Protocol recognizes the competence of the Human Rights Committee to receive and consider communications from the individuals subject to its jurisdictions who claim to be victims of a violation by that State of a right set forth in the Covenant. Individuals who make such a claim and who have exhausted all available domestic remedies are entitled to submit written communications to the Committee. We will discuss the procedure for complaints in sub section 4 of this unit.

The second optional protocol was adopted in 1989. It promotes abolition of death penalty. According to this protocol no one within the jurisdiction of signatory state shall be executed and each state party shall take all necessary measures to abolish the death penalty within its jurisdiction. The protocol has been adopted on the belief that abolition of the death penalty contributed to enhancement of human dignity and progressive development of human rights.

3.3 LIMITATIONS ON THE EXERCISE OF RIGHTS

The Covenant also places certain limitations on the exercise of the rights recognized by it. These limitations are primarily in the interest of public safety, public order and morals, national security, or for the protection of human rights of others. Article 29 (2) of the Universal Declaration of Human Rights in broad
general terms makes the following limitations respecting the exercise of the rights set forth in the Declaration. It states that: “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

In time of public emergency which threatens the life of the national and the existence of which is officially proclaimed, the States Parties to the ICCPR may suspend implementation of certain rights mentioned under ICCPR. Such limitations must however, be provided by domestic law and must be necessary that is proportional, reasonable and non-arbitrary. Limitation clauses provide states with an opportunity to balance universal human rights with national peculiarities and cultural and religious values but states are under an obligations to prove to the international community that there restrictions are necessary and reasonable.

In addition to limitation clauses, states also have other means to escape their obligations to respect civil and political rights — i.e. Emergency Situations.

In time of public emergency which threatens the life of the nation (for example war, internal armed conflicts, terrorism, natural disasters) they are authorized by Article 4 of the ICCPR to take temporary measures derogating from most of their obligations. At the time of ratification or accession they may also enter reservations, even to the extent of fully excluding the application of certain rights. In practice states tend to make use of these powers to suspend or violate rights quite frequently, but the Human Rights Committee and regional human rights bodies stress their authority to monitor reservations and emergency powers of states.

While the state is permitted temporarily to deny civil and political rights in situations of emergency it (the state) is not permitted, under any circumstances to violate or derogate from the right to life, freedom from slavery and slave trade, freedom from civil prison, right against ex post facto criminal law, right to recognition as a person before law, and the right to freedom of thought, conscience and religion. The, state, thus, is not allowed to violate these rights under any conditions, even those of emergencies. These seven rights are considered the minimum basic fundamental rights which should remain guaranteed to the individual at all times and can not be abridged, reduced or denied under any circumstances.

Check Yours Progress 2

1) What political rights have been provided in International Covenant on Civil and Political Rights?
2) Under what conditions a State can put restrictions against the exercise of rights?

3) What are the rights identified as non-derogable rights under the ICCPR?

3.4 IMPLEMENTATION MECHANISM

The implementation measures of the ICCPR are set out in Articles 28 to 45, and also in the Optional Protocol I which establishes a procedure for considering individual communication. The body which is charged with supervising the observance by States Parties of their obligation under the ICCPR is the Human Rights Committee (HRC). Article 28 of the ICCPR provides for the establishment of a HRC, consisting of 18 members who must be nationals of the parties to the ICCPR and persons of high moral character and recognized competence in the field of human rights. In their election consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems. The members of the Committee are elected for a four year term by secret ballot from nominations by State Parties at a special meeting convened for the purpose by the Secretary-General of the United Nations. Each party may nominate more than two candidates who must be nationals of the nominating State. Members of the Committee are eligible under Article 29(3) of ICCPR for re-election. The personal nature of the duties performed by Committee members is reinforced by the requirement that each must, on appointment, make a solemn declaration that he will perform his functions impartially and conscientiously. The Committee members are paid by the UN, thus eradicating one particular major source of potential government interference. The Committee presently meets three times in each year, in the spring, summer and autumn in sessions of three working weeks each. The spring session takes place in New York and the others two in Geneva. Secretariat services are provided by the United Nations Centre for Human Rights.

3.4.1 Functions of Human Rights Committee

The HR Committee performs three roles: Advisory and monitoring, conciliatory and inquiring and investigative. For this the main functions of the Committee can be divided into four. (1) To study reports from the States, (2) To formulate
general comments, (3) To consider complaints from a state party regarding other state (Communications from states) and (4) to consider complaints from individuals against state party.

**Reports From The States**

The ICCPR and its Optional Protocol I provide for one mandatory and two optional mechanisms to enable the Human Rights Committee to monitor fulfillment of obligations by the State parties. The mandatory means of supervision is a system of periodic reports under Article 40 (1). Under this provision States Parties undertake to submit reports on the measures they have adopted to give effect to the rights recognized in ICCPR and on the progress made in the enjoyment of those rights. Copies of State reports and comments are forwarded to ECOSOC for consideration, and the Committee itself is also required to submit an annual report to the General Assembly on its activities. A state party’s initial report is due within one year of the entry into force of the covenant for the country concerned. Subsequent reports, known as the “periodic reports” are due at a time individually specified by the Committee for each state party.

The Committee has decided that the periodicity for submission of subsequent reports other than initial reports is five years. However, pursuant to Article 40, the rules of procedure also stipulate that reports can also be requested “at any other time the Committee deems appropriate”. The Committee has stressed that the official reports should deal not only with the constitutional and legal situation in a country, but also with relevant activities of judicial, legal and administrative authorities, together with any restrictions or limitations even of a temporary nature imposed by law or practice or in any other manner on the enjoyment of the rights guaranteed in the ICCPR, and any other information on the progress made in the enjoyment of the rights.

However, in 1995 the Committee amended its guidelines for initial and periodic reports to stipulate that information provided on the implementation of each right should include, “factors affecting and difficulties experienced in the implementation of the ICCPR including any factors affecting the equal enjoyment by women of that right”.

**3.4.2 The Emergency Procedure**

Since 1991 the HRC has developed a procedure to respond to what it perceived as emergency situations. The procedure is clearly based on the provisions of Article 40 of the ICCPR and is reflected as follows in the Committee’s Rules of Procedure:

Request for submission of a report under Article 40, paragraph 1(b) of the Covenant may be made in accordance with the periodicity decided by the Committee or at any other time the Committee may deem appropriate. In the case of exceptional situation when the Committee is not in session, a request may be made through the Chairman, acting in consultation with the members of the Committee.

The Committee has under the procedure requested urgent reports from nine States parties so far. In most cases, the States parties are requested to submit the report within three months. Non-governmental Organizations (NGOs) have an important role in bringing emergency situation of human rights violations to the attention of the Committee.
3.4.3 Formation of General Comments

A further means by which the Committee carries out its functions of interpreting the Covenant and to clarify, the scope and meaning of its articles, and thus of all states parties obligation is through the development and adoption of so-called general comments. As the provisions of the Covenant, like most human rights treaties, are phrased in general terms and thus liable to be interpreted in a variety of ways, the committee has taken up the task of elaboration of general comments by way of advice to all states parties. Rather than dealing with a particular issue as it arises in the context of a particular state party’s situation, general comments analyse a specific article or general issue in the Covenant in as extended and comprehensive fashion. While most general comments are detailed interpretations of a specific Covenant right some address the Covenant rights of specific groups, such as aliens, while others address procedural issues, such as the preparation of reports, or miscellaneous issues, such as reservations to the Covenant. The General comments are available on the Treaty Bodies database of the office of the United Nations High Commissioner for Human Rights.

3.4.4 Inter-state Complaints Procedure

An important method of supervision of implementation of the ICCPR is optional, related to an inter-state complaints procedure covered under Articles 41 and 42 of the ICCPR. The Committee is competent to consider communications from a State party which considers that another State party is not giving effect to the provisions of the ICCPR. It shall make available its good offices to the State parties concerned with a view to promoting a friendly solution of the matter. This activity can be exercised by the Committee only if both States have declared that they recognize its competence to receive and consider such communication from States.

The first step in the process is for the state lodging the complaint to bring the matter to the attention of the state that is alleged not to be fulfilling its obligations. Within three months, the latter should reply, in the form of a written explanation or clarification. If, within six months, the matter is not settled to the satisfaction of both parties, either may refer it to the Committee which may deal with it, once satisfied that within a reasonable period of time, all domestic remedies have been tried without success.

The Committee may then take the matter up and propose its good offices in the search for a friendly solution. If there is still no agreement, the committee may appoint a five-person conciliation commission, with the agreement of the states parties directly concerned but not including their national among the members, with instructions to complete its business and submit a report to the Chairperson of the Committee and through that person, to the parties in dispute, within 12 months.

3.4.5 The Individual Communication Procedure

Another method of supervision of enforcement of the rights contained in the ICCPR is again optional. This is the individual communication procedure contained in the Optional Protocol. States parties may empower the Committee to receive and consider communications from individuals who claim to be victims of a violation by a State of any of the rights stipulated in the Covenant. The Committee can entertain individual communication only if a State party has
ratified the Optional Protocol to the Covenant. Individuals who claim that any of their rights enumerated in the covenant have been violated and who have exhausted all available domestic remedies may submit written communication to Human Rights Committee for consideration. The duty of the Committee here is to “forward its views to the State Party concerned and to the individual”. The function of the Committee is to gather all necessary information, by means of written exchanges with the parties, to consider the admissibility and merits of complaints, and to issue its “views” accordingly.

All steps of the procedure under the Optional Protocol are confidential until the point where the Committee adopts its views or otherwise concludes consideration of a case.

**Human Rights Committee under the Optional Protocol – An Evaluation**

The Human Rights Committee started its work under the Optional Protocol at its second session in 1977. One general trend in the emerging case law of the Committee is most promising: the Committee has displayed a determined desire to be seen to be acting in, at least, a quasi judicial manner. It has been conducting its work being fair to both petitioners and States parties. The ensuing analysis will reflect the nature and breadth of the Committee’s decisions on communications lodged by individuals.

**Legal Basis for Follow-up Procedure**

The idea for establishment of Human Rights Court with an effective implementation mechanism is still gaining momentum. It is true that the Human Rights Committee is not such a Court, but it does exercise analogous responsibilities and it is the only inter-national body to fulfil this need.

The Human Rights Committee’s decisions on the merits are referred to as “views” in Article 5, paragraph 4. Although views are read like court judgments, in fact drafters of the ICCPR did not call them so, nor did they confer upon them legally binding force. Another weakness is that the Optional Protocol does not provide for an enforcement mechanism. Thus, in practice the Committee’s views are more in the nature of recommendations. To make the Human Rights Committee more effective, a State may provide in its domestic legislation for implementation of the decisions of the Human Rights Committee.

### 3.5 IMPORTANCE OF CIVIL AND POLITICAL RIGHTS

As has already been mentioned Civil and Political Rights are considered as the most important and lasting achievement of various democratic revolutions and movements. These rights are primarily concerned with the recognition of individuals dignity, his or her right to live his or her life according to own choice while enjoying equality and liberty in the state and society. The very philosophy of Human Rights is based on the idea that all human beings are born equal and free. While this vision has been amply provided in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights imposes binding obligations on state in the form of treaty. State parties undertake to ensure the equal rights of men and women to the enjoyment of rights. It also enjoins states to make that principle a reality.
Civil and political rights provide for the protection of the right to life and dignified existence of individuals. These, therefore, stipulate that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, that no one shall be held in slavery, that slavery and slave trade shall be prohibited and that no one shall be held in bondage or required to perform forced or compulsory labour, that no one shall be subjected to arbitrary arrest or detention, that all persons deprived of their liberty shall be treated with humanity.

Liberty of movement and freedom to choose a residence, right to freedom of thoughts, conscience and religion and freedom of expression recognize that each individual has been endowed by nature of rationality and thinking faculty which cannot be restricted by the state arbitrarily. With respect to the area of an individual existence, the right to privacy protects one’s identity, integrity and intimacy. Identity includes one’s name, gender, appearance, feeling, honour and reputation.

The rationalism of the Enlightenment, as Manfred Nawak points out, stipulates individual’s spiritual existence, that is one’s belief in spiritual ideas and convictions, the communication of spiritual subject matters to fellow citizens, and the freedom to defend one’s thoughts and ideas in public, either individually or in community with others. The political freedoms of thought, conscience, religion, belief, expression, media, art, information, associations, assembly and trade unions etc., stem from this vision of rationality. Nawak further suggests that the right to take part in the conduct of public affairs, directly or through freely chosen representatives, is the most direct expression of political (democratic) freedom, distinguished from the concept of liberal or socialist freedom. Since democracy usually functions by means of representative participation, the most important political rights violating these rights put forward various explanations for that. They are held accountable by the International community and U.N. monitoring bodies. In extreme cases of violations collective actions have also been initiated against some states. In addition recognition of civil and political rights by the International Community has also encouraged human rights activists and movements to mobilize public opinion for their promotion and protection. As is well known now a large number of Non-governmental Organizations and other bodies are actively engaged in generating awareness about rights and putting the states in dock for their violation. Of course, individual themselves also need to be aware and concerned about their rights and participate in the movement for their promotion and protection.

Check Your Progress 3

1) Describe the Constitution of Human Rights Committee.
2) What roles are performed by the Human Rights Committee?

3) What procedures are followed by the Human Rights Committee to deal with different types of complaints?

4) Describe in brief the importance of Civil and Political Rights.

3.6 LET US SUM UP

In this unit we have discussed the type and nature of civil and political rights, as these have developed through various democratic movements and revolutions and finally consolidated in the International Covenant of Civil and Political Rights adopted by the U.N. General Assembly in 1966. This Covenant (ICCPR) contains 27 articles providing for various freedoms and protections. While importance of these rights is universally recognized, it is also accepted that in certain situations of emergency and in the overall social interest and protection of state these rights may be curtailed or not implemented. However, the state is not permitted, under any circumstances, to violate or derogate from the right to life, freedom from torture, freedom from slavery and slave trade, freedom from civil prison, right against ex post facto criminal law, right to recognition as a person before law, and the right to freedom of thought, conscience and religion. These seven rights are considered the minimum fundamental rights which should remain guaranteed to the individual at all times and a state has no excuse to abridge, limit or deny them to its people.

The machinery for the implementation of the rights recognized mainly consists of (a) the reports of state parties (b) Human Rights Committee and (c) Economic and Social Council. The main body for monitoring is the Human Rights
Committee a body of 18 members. The optional protocol adopted along with the covenants in 1966, provided for a special jurisdiction of the Human Rights Committee to deal with complaints by individuals of human rights violations by a state.

Civil and Political rights are important for recognition of dignity of individuals, respect their equality, liberty and rational faculties. Recognition of these rights by the international community has encouraged Human Rights movement to mobilize opinion for their promotion and protection.

3.7 ANSWERS TO CHECK YOUR PROGRESS
EXERCISES

Check Your Progress 1

1) The development of Human Rights from simple rights of individuals liberty and equality to that of positive rights and rights of groups is considered as development of generations of rights. Three generations of rights are:
   a) First Generation – Civil and Political Rights
   b) Second Generation – Economic, Social and Cultural Rights
   c) Third Generation – Rights of Groups or solidarity Rights.

2) Seven Human Rights Treaties are known as Core International treaties. These are given in sub-section 3.1.1.

Check Your Progress 2

1) Civil and Political Rights include:

2) The Civil and Political rights, except seven irreducible minimum rights can be denied or reduced in cases of
   a) Public emergency
   b) In the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

   It is expected that the limitations on the rights must be only to the extent strictly required, non-discriminatory and temporary in nature.

3) The state is not permitted, under any circumstances, to violate or derogate:
   The right to life, freedom from torture, freedom from slavery and slave trade, freedom from civil prison, right against ex post facto criminal law, right to recognition as a person before law, and the right to freedom of thoughts, conscience and religion.
1) The Human Rights Committee is a body composed of 18 members who shall be persons of high moral character and recognized competence in the field of human rights, some of them preferably with legal experience. States party to covenant elect these members.

2) The Human Rights Committee perform three roles:
   i) Advisory and Monitoring
   ii) Conciliatory, and
   iii) Inquiring and Investigative

3) Human Rights Committee receives complaints from states, individuals and receive reports from the states. See sub-sections 3.3.1, 3.3.2, 3.3.3 and 3.3.4

4) Write your answer on the basis of section 3.4