UNIT 4 INDIA’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Structure

4.0 Objectives
4.1 Introduction
4.2 Nature of International Human Rights Obligations
  4.2.1 State as Guarantor of Human Rights
  4.2.2 Reservations and Declarations
  4.2.3 Implementation Procedures and Treaty Monitoring Bodies
4.3 Domestic Status of International Human Rights Treaties
4.4 India and the ICCPR
4.5 India and the ICESCR
4.6 India and the ICERD
4.7 India and the CRC
4.8 India and the CEDAW
4.9 Judiciary and International Human Rights Obligations
4.10 Let Us Sum Up
4.11 Key Words
4.12 Answers to Check Your Progress Exercises
4.13 Useful Books and Articles

4.0 OBJECTIVES

After studying this unit you will be able to:

- know which human rights treaties have been ratified by India;
- what is the nature of international human rights obligations contained in those treaties;
- how these international obligations are implemented at the domestic level by India;
- explain the reservations and declarations made by India to these treaties; and
- understand the role of Indian judiciary in invoking international human rights obligations in their judgments.

4.1 INTRODUCTION

During the last 60 years India has ratified or signed 15 human rights treaties. However, in this Unit we are discussing only five treaties, which are known as core treaties, (the date of ratification or signature is given within brackets). They are called core because they have special monitoring bodies to supervise the domestic application
of international obligations arising from their ratification. Since India has so far not ratified CAT, it is not discussed here. The treaties discussed are:

1) International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD) (3 December 1968);

2) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) (10 April 1979);

3) International Covenant on Civil and Political Rights, 1966 (ICCPR) (10 April 1979);

4) Convention on the Rights of the Child, 1989 (CRC), (11 December 1992);

5) Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) (9 July 1993); and

6) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT) (signed on 14 October 1997).

4.2 NATURE OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

To understand how India has been honouring its international human rights obligations contained in these core major treaties in its domestic practices, it is essential to know the nature of these obligations. There are three important features of international human rights obligations. These three features help us to have a better understanding of the extent to which these international obligations are enforced at the domestic level. Let us elaborate these in brief.

4.2.1 State as Guarantor of Human Rights

The two UN Covenants on human rights recognize that the “State” is the guarantor and protector of human rights of the individuals residing in it. It is not the question of State sovereignty but States differ from one another in their socio-economic, political and cultural conditions and traditions. Since human rights are intrinsically related to the socio-economic and political systems and their realization depends to a great extent on the socio-political, economic and cultural development of a particular State, they are, therefore, in reality to be enjoyed by individuals in their own States and implemented under their domestic laws and institutions. Indeed, all human rights treaties recognize this fact. Moreover, these treaties are evolved on the principle that State is the guarantor of human rights. International obligations do not operate directly upon the individuals but work on the States. They are designed to induce them to adhere to the minimum norms agreed upon and spelled out in them. They serve only as an international process to encourage States to carry out their international human rights obligations and to desist from their violations.

All the core treaties recognize the principle of domestic application of international human rights obligations. They require the State Parties to adopt legislative and other measures to ensure realization of the rights provided in those treaties. For example, the ICESCR provides that each State Party undertakes to take steps with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, such as the adoption of legislative measures. The ICCPR also requires States to adopt legislative or other measures as may be necessary to
give effect to the rights of the Covenant whenever such provisions do not already exist in its domestic law. The Covenant specifically states that such measures have to be in accordance with their "constitutional process".

4.2.2 Reservations and Declarations

Most human rights treaties have been adopted by consensus, but they allow States to file reservations and declaratory statements to restrict/limit certain rights at the time of their ratification by them. Making reservations is not only part of the sovereign discretion of the State, but it recognizes the principle of built-in flexibility to accommodate national variations in respect of human rights treaties. The provision of reservations has enabled many States to ratify these treaties—thereby making their ratification universal. But these reservations should be compatible with the “object and purpose” of the Convention concerned. Reservations to substantive provisions of human rights treaties have greatly weakened the obligations of State Parties. In fact, they have undermined their effective implementation. In the succeeding pages you will know that India has made reservations to the core human rights treaties.

4.2.3 Implementation Procedures and Treaty Monitoring Bodies

When a country accepts one of the human rights treaties through ratification, it assumes a legal obligation to implement the rights set out in that treaty. But this is only the first step, because recognition of rights on paper is not sufficient to guarantee that they will be enjoyed in practice. When these treaties were adopted, it was recognized that State Parties would require encouragement and assistance in meeting their international obligations to put in place the necessary measures to ensure the enjoyment of rights provided in the treaty by everyone within the State. Each treaty therefore creates an international Committee of independent experts to monitor, by various measures, implementation of its provisions.

Most treaties provide three procedures of implementation — the reporting procedure, the inter-State complaint system and the individual petition system. You have read about these in course CRR-II. Just to remind let us briefly elaborate these procedures.

1) The Reporting Procedure

All core human rights treaties require the State Parties to submit periodic reports to monitoring bodies on the measures they have adopted which give effect to the rights contained in them and on the progress made in the enjoyment of those rights. These reports are supposed to indicate also the factors and difficulties, if any, affecting the implementation of internationally recognized human rights. Unlike the other two procedures, reporting procedure is compulsory. These reports are critically examined by independent expert members of monitoring bodies in the light of alternative country reports submitted by NGOs. Sometimes the Committee members seek additional information or reports. This kind of regular dialogue/interaction between the States and the UN bodies creates a favourable international public opinion for enforcement of human rights. The reporting procedure, in fact, is a novel system in international law as it has removed the matter of human rights from the exclusive concern of national jurisdictions. On the basis of reviewing of the State reports the monitoring bodies adopt not only “General Comments” which elaborate and interpret the meaning and content of human rights, but also formulate “Concluding Observations and Recommendations” on individual State Party.
2) **Inter-State Communication System**

Some human rights treaties provide for the inter-State complaint system. In most treaties this system is an optional procedure. However, under the ICERD, this procedure is not optional. Under this procedure one State can lodge a complaint of human rights violation against another State, provided both the States have accepted this optional procedure. Such complaints should be settled to the satisfaction of both the States within six months. After six months any Party may take the complaint to concerned monitoring body for mediation. Most States do not invoke this procedure for fear of reprisals.

3) **Individual Communication System**

The ICCPR, CEDAW and ICERD have an optional procedure of individual petition system. Unfortunately, India has not accepted these optional procedures, though it is a party to all the three treaties. In this procedure an individual, who claims that any of his rights have been violated, may submit written communications to the monitoring bodies for consideration after having exhausted all the available domestic remedies.

**Check Your Progress 1**

1) Name the core human rights treaties that have been ratified by India.

2) Do you think international human rights obligations operate directly upon the individual?

3) Why do human rights treaties allow State Parties to file reservations and declarations at the time of their ratification?

4) Discuss the usefulness of reporting procedure.
5) Explain inter-State communication system.

4.3 DOMESTIC STATUS OF INTERNATIONAL HUMAN RIGHTS TREATIES

In India treaties are not self-executing. The provisions of treaties do not form automatically part of the domestic law. Implementing legislation is necessary to give effect to the provisions of the treaties. In common law countries customary international law is considered as a part of the law of the land as long as they are not inconsistent with national statutes. Also, in these countries the courts refer to international treaties ratified by their country as a source of guidance in constitutional and statutory construction when their laws are uncertain, ambiguous or incomplete. In India, the Parliament, executive, and judiciary have the power to interpret a treaty. In certain cases, a treaty might be implemented by the exercise of the executive power of the President in accordance with Article 53 of the constitution.

Article 51(1) of the Indian constitution further provides that the State shall “foster respect for international law and treaty obligations”. Indian courts have endeavoured to interpret the Indian constitution and laws in consonance with the provisions of the international treaties ratified by India.

4.4 INDIA AND THE ICCPR

India is a party to the ICCPR. It has submitted, as of October 2007, only three periodic reports to the Human Rights Committee (HRC), the monitoring body of the Covenant. The first report (due in July 1980) was submitted in July 1983; the second report (due in July 1985) was submitted in July 1989 and the third report (due in March 1992) was submitted in November 1995. The fourth and fifth reports, due in March 2001 and 2006 respectively, are still awaited. Like many other State Parties, India is not submitting its periodic reports on time. Moreover, these reports when submitted late become dated. Also, they do not reflect the ground realities or violations of human rights. While evaluating India’s obligations under the ICCPR it is important to note that India has made several reservations also. They are:

1) Regarding Article 1 India has declared that the words “the right of self-determination” are to apply only to people under foreign domination, and do not apply to people in sovereign States.

2) India has said that Article 9 will be applied in consonance with the sections of Article 22 of the Indian constitution. Further, India noted that under Indian law there is no enforceable right to compensation for unlawful arrest or detention as prescribed by Article 9 (5) of the Covenant.

3) With regard to Article 13 (freedom of aliens from expulsion), India has said that this Article will be applied in consonance with the Indian constitution.
4) With reference to Articles 12, 19(3), 21 and 22 of the ICCPR India declared that the provisions of the said Article shall be so applied as to be in conformity with the provisions of Article 19 of the constitution.

These reservations have greatly affected the implementation of international human rights obligations in India. At the outset it must be noted that India’s three periodic reports have revealed that attempts to either remove or amend the reservations is not on the agenda of the Government. Let us examine the content and implications of these reservations.

India’s reservation to Article 1 of the Covenant has attracted many criticisms. The governments of France, Germany and the Netherlands have filed “objections” with the UN on India’s reservation. The French government stated that it takes objection to India’s reservation, as this reservation attaches conditions not provided for by the UN Charter to the exercise of the right to self-determination. The contention of Germany was that the right of self-determination as enshrined in the UN Charter and in the Covenants applies to all peoples and not only to those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue economic, social and cultural development. In its view India’s interpretation of the right of self-determination cannot be considered as valid because it is not only contrary to the clear language of the provisions in question but also incompatible with the object and purpose of the Covenant. The Netherlands considered that any attempt to limit the scope of this right or to attach conditions not provided for in the Covenant would undermine the concept of self-determination and would thereby seriously weaken its universally acceptable character.

Also, India’s reservation to Article 9 has been criticized by scholars, the HRC and the Supreme Court of India. Further, India has always maintained, and continues to claim that the specific conditions within India demand that for the maintenance of law and order, combating terrorism and other threats to security, there must be an allowance for infringing on individual liberty.

It must be noted that the Supreme Court has considered the issue of compensation for unlawful arrest, and have awarded compensation to numerous victims even when there is no constitutionally enforceable right to compensation. For example, in three landmark judgments—Rudal Shah, Nilabati Behera and D.K.Basu— the Supreme Court awarded compensation. In D.K. Basu the Supreme Court went to the extent of stating that India’s reservation to Article 9 has lost its relevance in view of the law laid down by it in a number of cases for the infringement of the fundamental right to life. Therefore, it is suggested that the government should review its reservation to this Article with a view to withdrawing it, so as to ensure its implementation.

Whenever a country’s report is considered by the HRC, its concluding observations on the report are very instructive, as they provide a critical perspective on human rights situations in the country. After considering India’s third periodic report, the Committee adopted many observations and recommendations (on 30 July 1997), some of which are listed below:

1) The HRC regretted the lack of information on difficulties encountered in implementing the provisions of the Covenant in practice.

2) The Committee, noting the reservations and declarations made by India to articles 1, 9, 12, 13, 19(3), 21 and 22 of the Covenant, invited India to review those
reservations and declarations with a view to withdrawing them, so as to ensure progress in the implementation of the Covenant rights.

3) It noted with concern that dalits and tribes and ethnic and national minorities continue to suffer from many violations of their Covenant rights.

4) It was gravely concerned with the deplorable practices of foeticide and infanticide of females despite legislative measure to ban it. It suggested that the government must take further measures to overcome those problems and to protect women from all discriminatory practices, including violence.

5) It is concerned that women remain underrepresented in public life and at the higher levels of the public service and are subjected to personal laws which violates the right of women to equality before law and to non-discrimination.

6) It was concerned with the gross violation of human rights as a result of the continuing reliance on the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed (especially in the north-eastern States).

7) The Committee endorsed the views of the National Human Rights Commission (NHRC) that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving them must also, essentially, be political, and it emphasized that terrorism should be fought with means that are compatible with the Covenant.

8) It regretted that in Manipur the Armed Forces (Special Powers) Act has been applied since 1980. In Committee’s opinion it is like using emergency powers without officially declaring emergency as per Article 4(3) of the Covenant.

9) The Committee regretted that the NHRC is prevented by the Act establishing it from investigating directly complaints of human rights violations against the armed forces.

10) It expressed concern that police and other security forces do not always respect the rule of law and that court orders for habeas corpus are not always complied with. It expressed its concern about the growing incidents of custodial deaths, rape and torture.

11) It was also of the view that preventive detention is a restriction on liberty. It recommended that a central register of detainees under preventive detention laws be maintained and that India will allow for visit of the International Committee of Red Cross to all types of detention facilities, particularly in areas of armed conflict.

12) It noted with concern that although Terrorist and Disruptive Activities Act (TADA) has lapsed, 1600 people were still in detention under it. It recommended that measures be taken for their early release or trial.

13) It expressed concern at bonded and child labour, child prostitution and the plight of street children.

Notwithstanding these critical observations and recommendations, the HRC highlighted the positive aspects of India’s record of human rights. It welcomed frequent references
to the provisions of international human rights treaties by Indian courts, especially the Supreme Court in their judgments. The establishment of NHRC in 1993 was a welcome development. It also welcomed the establishment of National Commission for Scheduled Castes and Scheduled Tribes, National Commission for Women and National Commission for Minorities. It welcomed the lapse, in 1995, of TADA. It noted that positions in elected bodies are reserved for dalits and tribals and that a constitutional amendment has reserved one third of the seats in elected local bodies (Panchayat Raj) for women.

Check Your Progress 2

1) What is the domestic status of international human rights treaties in India?

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2) Do you support India’s reservations to ICCPR?

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3) Which countries have filed objections on India’s reservation to Article 1 of both the Covenants? What is the content of their objections?

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4) Why the Supreme Court of India said in D.K.Basu judgment that India’s reservation to Article 9 of ICCPR has lost its relevance?

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5) What are the concluding observations and recommendations of HRC on India’s third periodic report?

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4.5 INDIA AND THE ICESCR

India ratified ICESCR in 1979 with the following reservations:

i) Article 1: India has declared that the words “the right to self-determination” are to only apply to people under foreign domination, and do not apply to people in sovereign States.

ii) Article 4 (limitations in the exercise of rights) and 8 (trade union rights): It declares that the provisions of those Articles shall be so applied as to be in conformity with the article 19 of the constitution.

iii) Article 7(c) (equal opportunity for promotion in employment): With reference to this Article India declares that its provisions shall be so applied to be in conformity with the provisions of Article 16 (4) of the constitution.

As of 2007, India has submitted its periodic reports to the Committee on Economic Social and Cultural Rights (CESCR) only twice. Its first report was submitted during 1980-1989 (in three parts covering different rights of the Covenant). The combined second, third, fourth and fifth reports due in June 1991, 1996, 2001 and 2006 respectively was submitted on 23 October 2006. It is unfortunate that after 1989 the next report was submitted nearly after 18 years in 2006. The CESCR, which reviews State reports took a decision to consider India's report in its 40th session scheduled for 28 April - 16 May 2008. It is instructive to recall here what the CESCR had said in 1990 on India's report. It had commented that the policy in the field of education with regard to dalits and tribals and other lower castes and ensuring equal opportunity of education for those groups was unclear. With regard to the right to culture, it observed that “more attention should be given to preserving the cultural traditions of minorities and to promoting access to cultural life by ordinary people”.

4.6 INDIA AND ICERD

India ratified ICERD on 3 December 1968. ICERD is the first core human rights treaty to enter into force which provided for a 18 member monitoring body, CERD. This treaty served as a model for the adoption of other core treaties, especially the two UN Covenants. This treaty not only defines racial discrimination but also sets out in six detailed Articles the obligations of States Parties to combat this scourge. The Convention requires a State Party to take appropriate measures against racial discrimination rooted in society, including the propagation of racial ideas advocated by groups and organizations. Under Article 9 of the Convention the States Parties are required to submit periodic reports on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the treaty. The periodicities of these reports have to be every two years.

So far India has submitted nineteen periodic reports — a much better record of fulfilling its obligation to report on the compliance of Convention rights. India submitted its 19th report (which contains its 15th to 19th reports) on 26 January 2006. In its 70th session (February – March 2007) the CERD examined this report in the light of many NGO alternative reports. After reviewing the report, the Committee adopted concluding observations on 6 March 2007. The Committee welcomed the report submitted by India and appreciated the comprehensive provisions and other legislations adopted to combat discrimination, including discrimination based on race and caste. However, the CERD took note of India's position that discrimination based on caste
fall outside the scope of Article 1 of the Convention (where racial discrimination is defined) and reaffirmed its position expressed in General Recommendation No. 29 that discrimination based on the ground of caste is fully covered by Article 1 of the Convention. The Committee urged India to repeal the Armed Forces (Special Powers) Act. It also made many other recommendations including for accession to the Convention Relating to the Status of Refugees and its 1967 Protocol and enactment of a comprehensive legal framework governing the treatment of refugees. It also recommended to effectively implement the Minimum Wages Act, 1948, the Equal Remuneration Act, 1976, the Bonded Labour Abolition Act, 1976, the Child Labour (Prohibition) Act, 1986, and the employment of Manual Scavengers and Construction of dry Latrines (Prohibition) Act, 1993.

It is interesting to note that Committee members asked many questions to the State representative concerning dalits and tribals. For instance, the Committee sought detailed information on concrete measures taken to eradicate the de facto segregation of dalits in access to temples, schools, hospitals, water resources, local markets and shops, restaurants, tea shops, cinemas, cultural and religious festivals, police stations, streets and other places. It requested a report on measures taken to protect dalit women against torture, rape, stripping and parading and other forms of violence and humiliation. It wanted to know what measures were adopted to deal with issues like sexual exploitation and trafficking of dalit and tribal women. It sought information on measures taken to ensure the right of dalits to vote freely and protect dalit voters against alleged booth rigging, booth capturing, denial of access to polls, intimidation and violence. Information on measures to promote inter-caste marriages between dalits and non-dalits and to eradicate social norms of purity and pollution which de facto preclude such marriages was sought. It wanted to know how the laws banning devadasi system is implemented. Finally it wanted to know what action is being taken to combat the alleged failure of the police and other law enforcement officers to properly register and investigate complaints about acts of ethnic and caste violence. Also it sought to know the measures taken to ensure that perpetrators of such acts are convicted and sentenced under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Since the rights of dalits and tribals are violated on a large scale, the Committee seeks additional information concerning the protection of their rights.

It must be noted that the reports of NGOs on Indian report provided excellent and well researched documentation of the rights of dalits.

4.7 INDIA AND THE CRC

As of 2007, India has submitted two reports under CRC. The first report was submitted on 19 March 1997 and the second report on 10 December 2004. India has been asked by the Committee to submit a combined third and fourth report on 10 July 2008. After reviewing India’s first report the monitoring Committee adopted observations and recommendations on 28 January 2000. The Committee was happy to note the existence of a broad range of constitutional and legislative provisions and institutions for the protection of human rights and children’s rights. It welcomed the growing involvement of NGOs and other grassroots organizations in activities to enhance the protection of human rights. It noted that extreme poverty, which affected a significant part of India’s population, and natural disasters were factors which represented serious difficulties to the fulfillment of all of India’s obligations under the Convention.
The Committee adopted many recommendations, which included, among others, the following:

- that India pursue efforts to ensure full compatibility of its legislation with the Convention;
- that all necessary measures, including the allocation of the required resources, be taken to ensure and strengthen the effective implementation of existing legislation;
- that a comprehensive national plan of action, based on a child rights approach, be adopted to implement the Convention;
- regarding the definition of the child, the Committee is concerned that the various age limits set by the law are not in accordance with the general principles and provisions of the Committee. Of particular concern to the Committee is the very low age of criminal responsibility under the Penal Code, which is set at seven years. The Committee is further concerned that minimum age standards are poorly enforced (e.g., 1929 Child Marriage Restraint Act). Therefore, the Committee recommends that India review its legislation with a view to ensuring that age limits conformed to the principles and provisions of the Convention, and that it take greater efforts to enforce those minimum-age requirements;
- that the registration of each child taken to police station be mandatory, including time, date and reason for detention, and that such detention be subject to mandatory review by a magistrate;
- that legislative measures be taken to prohibit all forms of physical and mental violence, including corporal punishment and sexual abuse against children in the family, schools and care institutions;
- that the 1986 Child Labour Act be amended so that household enterprises and government schools and training centres were no longer exempt from prohibitions on employing children, and that coverage was expanded to include agriculture and other informal sectors; the Bidi Act should be amended so that exemptions for household-based productions are eliminated. Employees should be required to have and produce on demand proof of age of all children working on their premises;
- that all necessary measures be taken to eradicate the practice of Devadasi system;
- that in order to combat trafficking in children, including for commercial sexual purpose, the Penal Code should contain provisions against kidnapping and abduction; and
- that India review its laws in the administration of juvenile justice to ensure that they were in accordance with the Convention. The Committee was concerned with the administration of juvenile justice in India and its incompatibility with Convention provisions. The Committee was concerned with the possibility of trying boys between 16-18 as adults in criminal cases. Noting that the death penalty is de facto not applied to persons under 18; the Committee is very concerned that de jure, this possibility exists. Therefore, it recommends that India abolish by law the imposition of death penalty to persons under 18.
After reviewing second periodic report, the Committee adopted on 30 January 2004 many Concluding Observations, which are quite similar to those adopted in 2000. It welcomed the adoption of the Constitution (86th Amendment) Act 2002 making free and compulsory education to all children between 6-14 years old as a fundamental right. It welcomed the ratification by India of the SAARC Convention on Preventing Trafficking in Women and Children for Prostitution. However, it regretted that some of the concerns it expressed and the recommendations it made in 2000 have not been sufficiently addressed, specially concerning child labour, administration of juvenile justice, birth registration (as 46% of children are not registered at birth), disabilities, education, and basic health. Therefore, it urged India to make efforts to implement those recommendations.

Expressing its serious concern on many problems faced by children, the Committee urged India, among others, to:

- extend to the whole of India the application of the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;
- enforce the Karnataka Devadasi Prohibition Act, 1982;
- take all necessary steps to implement the Child Marriage Restraint Act;
- ratify two Optional Protocols to the CRC. (It is gratifying to note that in 2005 India ratified them.).

### 4.8 INDIA AND THE CEDAW

While ratifying CEDAW, India made two Declaratory Statements and one reservation.

(i) Article 16(1) calls for elimination of all discrimination against women in matters relating to marriage and family relations. India declares that it shall abide by these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent. (ii) Article 16 (2) calls for making the registration of marriage in an official registry compulsory. India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered will not invalidate the marriage particularly in India with its variety of customs, religions and levels of literacy. (iii) Article 29 (1) establishes compulsory arbitration by the International Court of Justice of disputes concerning interpretation of CEDAW. India declares that it does not consider itself bound by this provision.

As of October 2007, India has submitted three periodic reports. The first report (due on 8 August 1994) was submitted on 10 March 1999. The second and third reports (due in 1998 and 2002 respectively) were submitted on 19 October 2005 as a combined report. The CEDAW Committee reviewed this combined report on 18 January 2007 and adopted many Concluding Comments on it. The Committee regretted that these reports were long overdue and did not provide the information requested by it on the communal violence in Gujarat, specially its impact on women, which negatively affected the implementation of the Convention. Therefore, the Committee requested for the submission of a follow-up report on the matter before January 2008. It sought information on the number of cases of sexual assault and violence against women reported in Gujarat; compensation awarded to women victims; and on arrests made and punishments imposed.
The Committee commended India’s National Policy on the Empowerment of Women which commits to ensure that all marriages are registered by 2010. It congratulated India on the enactment of the Protection of Women from Domestic Violence Act, 2005, and for amendments to the Hindu Succession Act and the Indian Divorce Act. It also commended India for its achievements in increasing enrolment in primary education through Sarva Shiksha Abhiyan Programme.

However, the Committee was critical of India’s efforts to implement Convention obligations. It expressed its concern and regret that many of its previous concluding comments and observations adopted in 2000 remain inadequately addressed, its recommendations to enforce laws preventing discrimination against dalit women; to take affirmative action to increase women’s participation in the judiciary. Therefore, the Committee urged India to implement its recommendations adopted in 2000. It requested India to provide information on the steps taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention is not impeded.

The Committee urged India to review or withdraw its reservations to Article 5 (a) and 16 (1) and encourage debate within the relevant communities on gender equality and the human rights of women and review and reform personal laws of different communities to ensure de jure gender equality and compliance with the Convention. It urged India to:

- Provide free legal services to poor women in rural and tribal areas;
- Amend relevant legislation relating to rape and expand definition of rape to criminalize marital rape and other forms of sexual assault, including child sexual abuse;
- Initiate and monitor the reform of textbooks at the state level to eliminate all gender-based stereotypes;
- Take adequate measures to implement and monitor implementation of Prohibition of Sex Determination Act, including safeguards to prevent criminalization of women who are pressurized into seeking sex-selective abortions;
- Eliminate child labour in compliance with international obligations and the Child Labour Prohibition Act, 1986; and
- Amend the Special Marriage Act to ensure equality for women in marriage and its dissolution and to give them equal rights to property accumulated during the marriage.

4.9 JUDICIARY AND INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

One very significant development with regard to respecting International treaties has been that the Supreme Court and the High Courts have been invoking international obligations in their judgments while deciding petitions seeking to enforce the constitutional provisions on fundamental rights. The courts have invoked international obligations to interpret and expand the scope of these constitutional provisions in the following cases.
i) In *Xaviers vs. Canara Bank*, the Kerala High Court, by invoking Article 11 of the ICCPR, forbid the imprisonment of a person merely on the ground of his inability to fulfill a contractual obligation, ten years before (i.e., in 1969) India ratified the ICCPR.

ii) In *Sheela Barse vs. Children's Aid Society*, the Supreme Court while, invoking Article 24 of the ICCPR, which recognizes children's right to education, ruled in 1987 that children are the citizens of the future era. Therefore, it decided that it is an obligation of Indian government and the State machinery to implement the international obligation on the rights of the child in the proper way.

iii) In *People's Union for Civil Liberties (PUCL) vs. Union of India*, the Supreme Court castigated in 1997 the Central Bureau of Investigation for arbitrarily and indiscriminately tapping the telephones of politicians in contravention to Article 21 of the Constitution, which forbids deprivation of life or personal liberty except according to the procedure established by law. In this judgment, Justice Kuldeep Singh invoked Article 17 of the ICCPR, which guarantees freedom from arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence.

iv) Article 19(1) and (2) of the ICCPR recognizes that every individual has right to seek information. This right is not recognized in the Indian Constitution. In *PUCL vs. Union of India*, the Supreme Court declared in 1997 that “it is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law”.

v) In *Visakha vs. State of Rajasthan* (1997) regarding “sexual harassment” of women at the workplace, the Supreme Court was more forthright in the use of human rights instruments for interpreting the constitutional provisions as well as the legal position of treaties that are not enacted as law. Chief Justice J.S. Verma observed:

> In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work place, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with dignity in Articles 14, 15, 19(1) and 21 of the Constitution and the safeguards against sexual harassment therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. (Italics added).

vi) Though India has entered a reservation to Article 9(5) of the ICCPR (concerning compensation for unlawful arrest), the Supreme Court in *Rudal Shah* (1983) has sought to read the awarding of compensation into their powers under Article 32 of the constitution.

vii) In *Nilabati Behra vs. State of Orissa* (1993), the Supreme Court's approach was similar.

viii) In *D.K. Basu vs. State of West Bengal*, a landmark judgment delivered in 1997, the Supreme Court not only made reference to the Court's precedent of awarding
compensation for fundamental rights but it also specifically refers to Article 9(5) of the ICCPR to which India has made reservation. The Court pronounced that reservation to this article has lost its relevance in view of the law laid down by it in a number of cases awarding compensation for the infringement of the right to life.

ix) In *Francis Coralie Mullin*, referring to Article 7 of the ICCPR, the Supreme Court held that the right to live with basic human dignity included the right not to be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

x) Similarly, in *Prem Shankar vs. Delhi Administration* (1980), the Supreme Court invoked Article 10 of the ICCPR which prohibits inflicting of torture on any person.

**Check Your Progress 3**

1) Under which treaty most questions on dalit rights are asked by treaty monitoring body? How does that body deal with such issues?

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2) Write about five recommendations adopted by CRC on Indian report.

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3) Explain briefly about five cases in which the Supreme Court invoked the Articles of core human rights.

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**4.10 LET US SUM UP**

In this unit we have read that; (i) India has ratified 15 human rights treaties, including five core treaties — the ICERD, ICESCR, ICCPR, CRC and CEDAW. (ii) States are the guarantors of human rights of their citizens. International human rights obligations do not operate directly upon the individuals but work on the States. They encourage them to carry out their international obligations towards human rights and to desist from their violations. (iii) India does not submit its reports on time. These reports appear to be outdated when reviewed by treaty monitoring bodies. Concluding
observations by these bodies provide critical perspectives of India's record of human rights. (iv) Reservations entered by India to some of these treaties have undermined the importance of certain rights. (v) Treaties are not self-executing in India. Human rights treaties have not been incorporated into domestic law. (vi) The Supreme Court and the High Courts have been invoking the provisions of human rights treaties, while deciding cases under constitutional and national law.

### 4.11 KEY WORDS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Common Law</td>
<td>The part of law developed by the courts in British modeled Parliamentary democracies.</td>
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<tr>
<td>Convention</td>
<td>In a specific sense, multilateral agreements between several States usually under the auspices of an international organization.</td>
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<tr>
<td><em>De facto</em></td>
<td>In reality or in fact.</td>
</tr>
<tr>
<td><em>De jure</em></td>
<td>In law or in theory.</td>
</tr>
<tr>
<td>Derogation</td>
<td>Deviation or avoidance of obligations under international convention by State Parties.</td>
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<tr>
<td>Foeticide</td>
<td>Premature and deliberate termination of pregnancy resulting in the death of the embryo or foetus.</td>
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<tr>
<td>Genocide</td>
<td>The act of killing of members of a group with the intention to wholly or partially destroy a national, ethnic, racial or religious group.</td>
</tr>
<tr>
<td><em>Habeas Corpus</em></td>
<td>A Latin word, which means “have the body”. A document in which a judicial authority directs the detaining authority to produce the detenue at a designated time and place.</td>
</tr>
<tr>
<td>Optional Protocol</td>
<td>An instrument that provides for rights and obligations in addition to those that may be laid down in the principal treaty or convention. States are required to ratify or accept an Optional Protocol separately.</td>
</tr>
<tr>
<td>Ratification</td>
<td>The act by which a State signifies its willingness to accept the obligations outlined in a treaty or convention and agrees to be bound by it.</td>
</tr>
<tr>
<td>Reservation</td>
<td>A unilateral statement made by a State when signing or ratifying an international treaty, excluding or modifying the application of certain provisions of such treaty.</td>
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4.12 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) India has ratified five core human rights treaties: ICERD, ICESCR, ICCPR, CRC and CEDAW. See sub-section 4.1

2) India’s international human rights obligation do not operate directly upon the individuals. Rather they impose obligations on States Parties. They have to be implemented by States in their domestic setting through their constitutional and political processes. Human rights treaties require States Parties to take steps—legislative, administrative etc. — to implement these obligations. See sub-section 4.2.1

3) Human rights treaties, like other treaties, have a provision of reservations/declarations that a State Party files at the time of ratification. Marking reservation is not only part of the sovereign discretion of the State, but it recognizes the principle of built-in flexibility to accommodate national variations in respect of human rights treaties. The provisions of reservations has enabled many States to ratify these treaties—thereby making their ratification universal. See sub-section 4.2.2

4) Reporting procedure has many advantages. It acknowledges that States have to take various measures to give effect to the international human rights obligations. It enables them to indicate the factors and difficulties that they faced while implementing these obligations. The discussion/review of State reports by expert Committees in the light of NGO reports introduce a kind of dialogue between the State and international human rights body. See sub-section 4.2.3

5) Inter-state communication system establishes a procedure that one State can complain to another State Party on the noncompliance of human rights obligations or their violations. This procedure is generally optional and applicable to those States which have accepted it. It requires that such complaints have to be settled amicably within six months—after this period any Party may bring this matter to the treaty monitoring body for mediation. See sub-section 4.2.3

Check Your Progress 2

1) In India treaties are not self-executing. The provisions of treaties do not form automatically part of the domestic law. Implementing legislation is necessary to give effect to the provisions of the treaties. In India, the Parliament, executive, and judiciary have the power to interpret a treaty. See section 4.3

2) See sub 4.4

3) France, Germany and the Netherlands have filed objections. The French government stated that it takes objection to India’s reservation, as this reservation attaches conditions not provided for by the UN Charter to the exercise of the right to self-determination. The contention of Germany was that the right of self-determination as enshrined in the UN Charter and in the Covenants applies to all peoples and not only to those under foreign domination. All peoples, therefore, have the inalienable right freely to determine their political status and freely to pursue economic, social and cultural development. The Netherlands considered that any attempts to limit
the scope of this right or to attach conditions not provided for in the Covenant would undermine the concept of self-determination and would thereby seriously weaken its universally acceptable character. See section 4.4

4) In D.K. Basu judgment the Supreme Court not only made reference to the Court’s precedent of awarding compensation for fundamental right (since 1980 in Rudal shah case) but it also stated that Article 9(5) of the ICCPR (to which India has made reservation) has lost its relevance in view of the law laid down by it in a number of cases awarding compensation for the infringement of the right to life. See section 4.4

5) Humman Rights Committee made 13 Concluding Observations and Recommendations on India’s third report under ICCPR, which pertained, among other, to issues of bonded / child labour, preventive detention laws like TADA, NSA, etc, role of NHRC, Armed Forces (Special Powers) Act, and rights of dalits, tribes and minorities. See section 4.4

Check Your Progress 3

1) It is ICERD. The monitoring Committee sought detailed information on concrete measures taken to eradicate the de facto segregation of dalits in access to temples, schools, hospitals, water resources, local markets and shops, restaurants, tea shops, cinemas, cultural and religious festivals, police stations, streets and other places. It requested a report on measures taken to protect dalit women against torture, rape, stripping and parading and other forms of violence and humiliation. It expressed concern on problems of devadasis, bonded labour and manual scavenging. See section 4.6

2) These recommendations pertained to the following issues: eliminate child labour; take adequate measures to monitor implementation of prohibition of Sex Determination Act; eradicate devadasi system; combat trafficking in children, including for commercial sexual purpose; bring the definition of child in domestic law in commercial with CRC. See section 4.7

3) The Supreme Court invoked the provision of human rights treaties in many of its judgments. Five of the cases in this category are the following: D.K. Basu, Sheela Barse vs. Children’s Aid Society, PUCL vs. Union of India, Vishaka vs. State of Rajasthan and Nilabati Behera vs. State of Orissa. See section 4.9

4.13 USEFUL BOOKS AND ARTICLES


SAHRDC, Introducing Human Rights (New Delhi: Oxford University Press, 2006)
