

Mechanisms for Implementation of Human Rights: A Critical Analysis in Bangladesh Perspective

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Abstract: The concept of human rights is not new but the implementation mechanisms of human rights at national, regional and international level remain quite newer than the concept. The paper examines the implementation mechanisms of international human rights regime on governments' human rights practices. The paper put forward an explanation that highlights a "paradox of empty promises" by the governments in implementing human rights. The core argument of the authors is that the universal institutionalization of human rights has created an international context in which governments often ratify human rights treaties as a matter of window dressing, thoroughly decoupling guiding principle from practice and at times exacerbating off-putting human rights practices, but the embryonic global legitimacy of human rights exerts independent universal civil society effects that perk up states' actual human rights practices.

Keywords: Human right, Bangladesh, international, implementation, violation, mechanism.

Introduction

Human rights are said to be the inherent, universal, inalienable and indivisible rights to which we all are equally entitled without any discrimination as to race, religion, nationality, color, gender, language, place of birth or any other status. These rights are also called the interrelated, interdependent and self-evident. As a human being, it is the duty of every person to know what the human rights are. What rights s/he belongs to? And how these rights can be enjoyed without any obstruction? At the same time it is the obligation of every governmental body to ensure the effective implementation of these rights so that no member of the human family becomes deprived of enjoying these and exposed to the consequences ensuing from the violation of any of these rights.

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Bangladesh is a party to a number of major international human rights and humanitarian law treaties, *albeit* with important reservations to some of them. But the implementation of these human rights remains a far cry due to its ineffective implementation mechanism. This increasing gap between the different tenure of governments of Bangladesh proclivity to join with the modern human rights regime and to bring their human rights practice into compliance with that regime which challenges the effectiveness of international law and questions the legitimacy of its legal commitments to protect the lives of its citizens. Scholars of international relations, particularly within the realist and neoliberal traditions, expect this compliance gap between states' commitment to international law and states' practices. The main aim of this paper is to focus and analyze how far the implementation mechanisms of human rights in Bangladesh are sound. This paper intends to focus the significance of increasing the respect and observance of human rights and fundamental freedoms for Bangladesh and the overall development of human being.

Human Right: What Is It?

The simple meaning of the term 'right' concerns that which a person has just claim to, or that which belongs to a person by law, privilege, tradition or nature. When we talk of human rights, we are talking of a concept that draws substantially from what we traditionally refer to as the natural rights. Human rights thus came to be evolved as those of the natural rights which are basic to the very existence and growth of a human being and which every civilized society would like to ensure into them, albeit its own larger interest (Sinha, 2014, p. 1). The true pioneer of human rights was the idea of natural rights which appeared as part of the medieval natural law tradition that became renowned during the enlightenment with the philosophers (e.g., Locke, Hutcheson and Burlamaqui) which featured considerably in the political discourse of the American and French Revolution. Thomas Paine for the first time used the term 'human rights' in the English translation of the French Declaration of Rights of Men and of the Citizen, that was adopted by the National Assembly of France in 1789 (Mondol and Mondol, 2006, p. 29).

The idea of human right is the heart of international law that represents the fundamental values common to all cultures, and must be respected by all countries throughout the world. The term 'human rights' refers to a wide range of inherent and inalienable rights, which all individuals have, irrespective of their race, color, sex,

language, political or other opinion, birth or other status (Khair, 1997, p. 69). According to the Encyclopedia Britannica, human rights are the rights that belong to an individual or group of individuals simply for being human, or as a consequence of inherent human vulnerability, or because they are requisite to the possibility of a just society (Weston, 2014, p. 26). Human rights are concerned with the dignity and self-esteem of the individual that are essential for securing personal dignity and promoting human community (Aziz, 1978, p. 1). Henkin in an article describes this trait in the following words:

“To call them human rights suggests that they are due of every human being in every society. They do not differ with geography or history, culture or ideology, political or economic system or stage of development. They do not depend on gender or race, class or status. To call them ‘rights’ implies that they are claims ‘as of right’ not merely appeals to grace, or charity or brotherhood or love; they need to be earned or deserved. They are more than aspirations or assertions of ‘the good’ but claims of entitlement and corresponding obligation in some political order under applicable law, if only in a moral order under a moral law” (Henkin, 1981, p. 54).

Human rights are fundamental to our nature except which we cannot expose ourselves as human beings and it enables us to develop and exercise our human attributes and physical, psychological and spiritual qualities (Hossain, 2014, p. 75). They represent the minimal moral standards for human society (Abram, 1967, p. 67). Human rights are distinct from other rights in two aspects: (1) human rights cannot be acquired, transferred or disposed of by any act or incident and as such, they inhere universally in all human beings by virtue of their humanity alone; and (2) their primary correlative duties rest upon public authorities of states and not on the individuals (Sieghart, 1984, p. 17). Human rights are the moral norms that explicate certain standards of human behavior, and are protected as legal rights in domestic and international law (Nickel, et. al., 2013, p. 118). Human rights exist to stabilize the human from any kind of deprivation with a legal framework (Alam, 2011, p. 74). The notion of human rights has been criticized as a Western construct with little or no relevance elsewhere. Gradually this challenge has come to be understood not as requiring the abandoning of universality but as calling for cultural sensitivity and dialogue (Almqvist, 2012, p. 94).

Important Features of Human Rights: Five-Point Intersection

Human rights were called rights of man in the past, it means, in general sense, those rights which are inherent and inalienable in the nature of human beings and are indispensable for the expression of humanity without which no one can live as a human being (Mondol and Mondol, 2006, p. 31). Inherence and inalienability are two vital exclusivity of human right that has made it clearly distinct from the general rights (Sieghart, 1983, p. 1). Human rights have the following unique features:

1. Human rights are inherent in every human being simply by virtue of being a “member of human family”. Upendra (2006, p. 231) opines that human rights are inherent since they inhere universally in all human beings throughout their lives in virtue of their humanity. Human rights are inherent as all human beings claim their inherent human rights by virtue of the common humanity (Faruque, 2012, p. 20).

2. Human rights are also universal rights. These are those universal rights which are essential to all human beings entirely because of being human and it is immaterial where they live. These rights are fundamental to our existence as human beings and cut across all national and political frontiers which derive in the equal rights and dignity of all human beings and simultaneously aims at protecting it. Human rights do not differ with geography, or history, culture or ideology, political or economic system, or stage of societal development (Henkin, 1999, p. 122). The normative presumption on universality enshrined in the UDHR that “All human beings are born free and equal in dignity and rights” (UDHR, 1948, Article 1) is treated as a binding law in the international human rights treaties of the UN.

3. Human rights are inalienable as they cannot be transferred, forfeited, or waived. Human rights are usually realized as the basic inalienable legal guarantees to which a person is inherently entitled simply as s/he is a human being (Sepulveda and et. al., 2004, p. 55). Inalienable nature of human rights refers to human dignity as founding values upon which human rights are based (Lee, 2008, p. 3).

4. The human rights are indivisible, i.e., all human rights should be enjoyed by all people at all times and that no one set of rights can be enjoyed at the expense of others. It also refers to the fact that all

human rights have equal status, and cannot be categorized in a hierarchical order.

5. Human rights are self-evident in nature. Self-evident nature of these rights can only be grasped by reflection on the nature of a person as a person—namely as a rational, autonomous, emotional, imaginative and creative being.

Implementation Mechanism: Meaning and Definition

Through implementation mechanism is meant any sort of obligation, procedure, or process recognized or established by a treaty that is designed to motivate or to promote compliance, whether such motivations are in the form of avoiding shame or other, more concrete results. Saunders opines that by “enforcement mechanisms,” I mean, any type of obligation, procedure, or process established by a treaty that is designed to promote or incentivize compliance, whether such incentives are in the form of avoiding shame or other, more tangible consequences (Saunders, 2012, p. 12). Implementation entails a group of activities, which include primarily activities to improve compliance by the states themselves, e.g., enacting national laws or administrative practices to comply with human rights standards, strengthening the judiciary, establishing national human rights institutions, improving minimum health standards, and participating in the governance. Before the birth of UN there were no specific international provisions with regard to the protection and promotion of human rights though there were only national and regional instruments for their protection (Faiz-ud-din, 2011, p. 7). Since 1948, the UN has created numerous treaties, covenants, principles, declarations, protocols and different mechanisms concerning the protection and promotion of human rights to monitor the respect and observance of states towards their international obligations. Implementation of the rights is the obligation and sovereign right of each state itself (Henderson, 2005, p. 8). The human rights treaties are legally binding and the state parties to these treaties are responsible for their implementation. Thus, the state and its agencies are called “duty bearers”. States are the main actors within the arena of international law that have the primary obligation to implement human rights and this obligation has three aspects: to respect, protect and fulfill the human rights. This tripartite typology was introduced by Shue (1996, p. 52) in his book *“Basic Rights: Subsistence, Affluence and US Foreign Policy”* and then developed by Eide (1987, p. 68).

Human Rights: Implementation Mechanism

The implementation mechanism of human rights is dividable into three broad categories, e.g., international, regional and national (Noman, 2008, p. 66). These mechanisms are set up by specific sources of international law particularly treaties which define the relevant substantive human rights obligations (Milanovic, 2013, p. 210). The international mechanism under the UN alone is not enough to protect human rights throughout the world; rather regional and national human rights mechanisms have proven to be more effective and useful in protecting and promoting human rights, as they are not only complementary to the UN system, but also reflect the regional particularities (Marie, 2003, p. 32). Among these three mechanisms, the national one is considered to be more fruitful and effective as it is needless for a victim of violation of human rights to seek the international or regional protection if that person gets the proper remedy under the domestic protection system through exhausting all the local remedies in his home country.

The international implementation mechanism mainly depends upon different charter-based bodies and treaty-bodies functioning under the supervision of the UN. Conversely, the national mechanism relies on the supreme law, domestic legislations, independent judiciary, right-based institutional framework and effective harmonization among the three organs of the government, i.e., the executive, legislature and judiciary. Among these three vital organs of the government, the executive is found to be the most violator of human rights while the judiciary is considered to be acting as the protector of human rights through the judicial activism and review (Perelman, 1982, p. 119). Despite the emergence of numerous human rights treaties, treaty-based and charter-based mechanisms, monitoring bodies under these mechanisms and various reforms in the charter-based bodies of the UN, gross human rights violations remain uncontrolled in different parts of the current world. However, human rights can be implemented mainly in the following three spheres:

Implementation Mechanism of Human Rights: Bangladesh Perspective

The domestic implementation of human rights court rulings is an especially demanding and obtrusive kind of state observance of international norms. It involves the efforts of national authorities to redress detected violations and to bring existing laws and practices in line with the underlying standards and principles (Anagnostou and Mungiu, 2014, p. 52). It is a multi-faceted and inherently political

process that involves different national institutions and actors - executive, legislative, judicial, as well as societal - with divergent preferences and priorities, who may be in conflict over whether and how to implement human rights rulings (Hillebrecht, 2012, p. 959). In this process, the violating states, including established democracies, display various forms and degrees of compliance with international norms and judicial rulings, raising significant questions about the factors accounting for such differences (Koh, 1999, p. 66). Governments are principally responsible for implementing the human rights at the national level (Wiston House, 2014, p. 7). People have always been struggling for the implementation of their rights against the government since the emergence of state, though the state is the creation of the people themselves (Haque, 2006, p. 13). The definition of human rights presupposes that they should be protected by appropriate and effective implementation mechanisms at national level. The domestic human rights protection mechanism also relies upon the access to justice and effective remedies for human rights violations (Akkas, 2003, p. 64). The human right under the national sphere *inter alia* can be implemented or enforced in the following manners:

1. Implementation of Human Rights under the Bangladesh Constitution

A mere declaration or insertion of some human rights as fundamental rights in the constitution of a country is of no value unless there is existence of any fruitful, easy and effective machinery in it. In the case of *Saiyyid Abu A'la Moudoodi and Others v. Federation of Pakistan* (1964 PLD (SC) 673), Justice Habibur Rahman observed as follows:

“The basic principles’ underlying a declaration of fundamental rights in a constitution is that it must be capable of being enforced not only against the executive but also against the legislature by judicial process.”

The Constitution of Bangladesh contains provisions regarding human rights in its three different parts including the preamble. The human rights contained in the part II are not judicially enforceable, whereas, the human rights enshrined in the part III are judicially enforceable. In Bangladesh, the national protection system can be inferred from its constitutional commitments from the fundamental rights incorporated in Part III of the Constitution, which are judicially enforceable by the High Court Division (HCD) under Article 102 of the Constitution. The significance of Part III of the Constitution is that it just not incorporates the basic human rights of

civil and political nature; rather it also guarantees as a fundamental right, a mechanism for establishment of the same through the judicial intervention. The duties of the state as to human rights recognized as fundamental rights are immediately enforceable by the individuals. The HCD has the power under article 102(1) of the constitution to pass necessary orders to enforce fundamental rights and under article 44(1) the right to move the HCD under article 102(1) is itself a fundamental right (Islam, 2002). Articles 44(1) and 102(1) provide that individuals who feel aggrieved can move to the HCD for enforcement of any of their fundamental rights guaranteed in the constitution. It is not discretionary with the HCD to grant relief under article 102(1); rather once it finds that a fundamental right has been violated, it is under constitutional obligation to grant the necessary relief (*Kochuni v. Madras*, AIR, 1959 (SC) 725).

2. Implementation through Public Interest Litigation (PIL)

Public Interest Litigation which is intensely connected to the human rights and rule of law means litigation filled in a competent court of law for the protection of public interest and human rights. It has been construed by the judges to regard as the interest of public at large (Ramlogan, 2010, p. 437). PIL is one of the significant strategies of judicial activism, which is now treated as an integral part of the judicial process in South Asian region (Bhagwati, 1990, p. 531). It is a means of protecting the collective rights of under-privileged group of people and is now well accepted avenue of judicial activism (Cooper, 1998, p. 361). In Bangladesh, PIL is an effective tool for protecting human rights under a simplified complaint system which has entered into the legal system for the first time in the case *Kazi Mukhlesur Rahman v. Bangladesh* (26 DLR (SC) 44). It is a good contribution of the Judiciary to protect human rights for the people even in a circumstance in which the victim has no means to go before the Court (43 DLR (AD) 126). PIL is a savior of various human rights, e.g., civil rights, political rights, environmental rights, children and women's rights that has developed a new jurisprudence of accountability of the state for constitutional and legal violations, adversely affecting the rights and interests of the weaker sections in the community (Talukder and Alam, 2011, p. 47). Foster and Jivan opine that different PIL decisions in different jurisdictions reveal how courts have given impetus to the protection and promotion of human rights, by expanding the meaning of fundamental right to life, liberty and equality (Forster and Jivan, 2008, p. 33).

3. Enacting National Laws in Conformity with International Instruments

The governments of different States can implement the human rights of their individuals through enacting domestic legislations in conformity with different international and regional human rights instruments. The national protection of human rights entails the state to enact any law according to the principles enunciated in the UN Charter, UDHR and other global human rights instruments depending upon the attitude, culture and practice of people in government and socio-economic infrastructure of a particular state (Ramcharan, 2009, p. 77). Though Bangladesh did not acquire its membership of the UN until 1974, the International Bill of Human Rights (comprising the UN Charter, UDHR, ICCPR and ICESCR along with two Optional Protocols to the ICCPR) profoundly influenced the drafting of the Constitution of Bangladesh. The national courts can take into account the provisions of the Bill as an aid to the legal interpretation of fundamental rights as enumerated in our Constitution. The constitution of Bangladesh has specifically acknowledged the principle of respect for international law as a fundamental principle of state policy that is enunciated in article 25 which provides that the state shall base its international relations on the principles of respect for international law and the principles enunciated in the UN Charter, 1945 (Article, 25). The insertion of this principle in the national constitution is an indirect compromise regarding the state sovereignty. Not only that, on the basis of this constitutional mandate, the courts of Bangladesh had tested the validity of certain governmental actions concerning international relations in the light of the UN Charter, 1945 (Haque, 2011, p. 21).

4. Ratification/Accession to International Human Rights Instruments

The government of a particular state may implement the human rights domestically through the ratification or accession to different regional or global human rights instruments as well as taking the obligations under these instruments as its domestic legal obligation. Bangladesh has adhere some international humanitarian treaties including Geneva Conventions I, II, III, IV 1949 (adhere in 04.04.1972), Additional Protocol I 1977 (adhere in 08.09.1980), Hague Convention 1954 (adhere in 23.06.06), Hague Protocol 1954 (adhere in 23.06.06), ENMOD Convention 1976 (adhere in 03.10.79). Moreover, Bangladesh signed some international human rights law.

So far, as the provision of legal assistance in paragraph 3(d) of Article 14 of ICCPR 1966 is concerned, a person charged with criminal offences is statutorily entitled to legal assistance if he does

not have the means to procure such assistance. The Government of the People's Republic of Bangladesh, notwithstanding its acceptance of the principle of compensation for miscarriage of justice, as stipulated in Article 14, paragraph 6, is not in a position to guarantee a comprehensive implementation of this provision for the time being. However, the aggrieved has the right to realise compensation for miscarriage of justice by separate proceedings and in some cases, the court *suo moto* grants compensation to victims of miscarriage of justice. Bangladesh, however, intends to ensure full implementation of this provision in the near future.

In accordance with Article 3 (2) of [the Optional Protocol], CRC 1990, the Government of the People's Republic of Bangladesh declares that the minimum age at which it permits voluntary recruitment into its national Armed Forces is sixteen years for non-commissioned soldiers and seventeen years for commissioned officers, with informed consent of parents or legal guardian, without any exception. The Government of the People's Republic of Bangladesh further provides hereunder a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced. The process of recruitment in the national Armed Forces is initiated through advertisement in the national press and the media for officers and other ranks without exception. The first induction of new recruits is conducted invariably in a public place such as a national park, school ground or a similar place. Public participation is welcomed in such.

In Bangladesh, judicial invocation of human rights norms is also increasingly obtaining ground as an instrument of filling the gaps in domestic law on human rights norms as well as an interpretative tool of domestic laws or fundamental rights under the constitution. Bangladesh has been a member of the UN since 1974, and has already ratified all the core international human rights instruments (Khan, 2012, p. 20). It has also ratified the Optional Protocols to the Convention on the Rights of the Childs 1989, Convention on the Rights of Persons with Disabilities and the ILO Conventions (Karim and Theunissen, 2011, p. 44). Articles 145 and 145A of our constitution deal with the provisions about the making of contracts and deeds and the formalities regarding international treaties though they are totally silent regarding the application of such treaties in domestic law. Under article 145(1), the power to make any contract or deed on behalf of the state is vested in the executive authority of the state, and any such contract or deed shall be expressed to be made by the President and shall be executed on behalf of the

President by such person and in such manner as he may direct or authorizes.

5. Application of International Human Rights Law in Domestic Courts

A state can also implement the human rights within its territory by applying the international human rights law in its domestic courts though state practice in domestic application of this law varies greatly. Under the international law there are two distinct theories regarding the status or application of international law in domestic arena: monism and dualism. ‘Monism’ reveals the notion that global law need not be included into the domestic legal system. When a monist state becomes the party of a particular treaty, it automatically becomes a part of the domestic laws. According to the monist theory, international and national law are concomitant aspects of the one general system-law in general (Shearer, 1994, p. 69). In case of conflict between these two, ‘international law is said to prevail’ (Dixon, 2007, p. 34). On the other hand, dualism indicated that international and national legal rule is separate entities, i.e., strict distinction is maintained between these two laws with regard to their enforcement.

Bangladesh maintains the dualistic view following the UK, meaning that the provisions of global instruments are not directly enforceable in domestic courts unless ratified and incorporated into the domestic law by recognized means (Alam, 2007, p. 14). The general practice of Bangladesh is that international treaties do not automatically become part of the domestic law of this country unless it is incorporated into the domestic legislations. Consequently, the international treaties are required to be inserted into the domestic legislation passed by the due procedure and then it will be part of domestic law (Hosain, 2013, p. 78). The approach of the Court was reflected in the case of *BNWLA vs. Government of Bangladesh and Others* (14 BLC (2009) 703) where the Court vehemently declared:

“Our courts will not enforce those covenants as treaties and conventions even if ratified by the State, as they are not part of the corpus juris of the State unless those are incorporated in the municipal legislation”.

The Apex Court of Bangladesh has affirmed a liberal principle that if the domestic laws are not plain enough or there is nothing therein, the domestic courts should take into account the principles of relevant international instruments. The situation of Bangladesh concerning domestic application of international law is characterized

by lack of case laws, vagueness of constitutional and statutory provisions, and unwillingness of our judges and lawyers to refer the global instruments. Most of the global instruments ratified by Bangladesh have not yet been included into the domestic law to be enforced directly in domestic courts and thus, the status of international law in Bangladesh remains in many ways unclear (Hasanat, 2013, p. 71).

6. Implementation through Legislative and Policy Framework

The obligation of Bangladesh to protect and promote human rights in compliance with international obligations is evident from the enactment or amendment of numerous domestic legislations as to right to information, prevention of oppression and suppression against children and women, labor rights, legal aid, establishment of National Human Rights Commission, Anti Corruption Commission and other welfare legislation for protecting the interest of the citizens of different catastrophe. Mere enactment of laws is not enough; rather their enforcement and implementation by the government organs is also important for achieving this goal.

7. Implementation under the Institutional Framework

i. The National Human Rights Commission (NHRC)

The NHRC consistent with the Paris Principles Relating to the Status of National Human Rights Institutions, 1993 for the protection and promotion of human rights in Bangladesh has been serving as an effective mechanism to address gross and systematic human rights violations (Razia, 2007, p. 1). The NHRC of Bangladesh was established under the National Human Rights Commission Act, 2009 which works like a national human rights watchdog and consists of three members, one chairman and other two members (NHRC Act 2009, Section 4(1)).

ii. The Anti-Corruption Commission (ACC)

It is another important body of the government which was created with an aim to remove the corruption in museum and ensure the rights of people. The ACC was established in 2004 to form an independent agency for combating corruption with legal authority to conduct inquiries and investigations, file and conduct cases, review legal measures for preventing corruption, demand statement of assets and liabilities, and seize property in excess of known sources of income. But in practice the ACC is full of defects mainly on the

ground that the officials of the Commission are from different agencies of the Government who are apparently known as corrupt.

iii. The Information Commission

The Information Commission is the institutional mechanism created by the law and is headed by the Chief Informational Commissioner with the other two Commissioners. The Commission is responsible for overseeing the compliance with the Right to Information Act, 2009 educating people about their rights and resolving disputes regarding information disclosure. The Commission is entrusted to issue directives to authorities for preservation, publicity and management of information, etc.

The implementation mechanism of human rights in the national sphere appears pretty though in practice they undergo different critical lacking for which despite having the initiative it fails to accomplish the hopes and aspirations of the people. Nevertheless, in the states who have parliamentary democracy, the rulers once elected to power do not comply with the norms and commitments on human rights incorporated in the Constitutions (Goonesekere, 2010, p. 85). The domestic legal systems have remained so far largely unutilized to enforce human rights law in their respective state territories. Though the human rights obligations of a state extend to all branches and levels of government, implementation itself relies upon certain institutions. Obviously, implementation mechanisms are not the same as political will, which remains the most vital factor for implementing human rights (Vos, 2013, p. 64).

Implementation Mechanism of Human Rights: International Arena

Human rights in international sphere can be implemented under different international instruments by different monitoring bodies. These bodies are often treated as the “gold standard” as they embrace what their far-more-common enforcement brothers - monitoring and reporting mechanisms - lack: the ability to impose sanctions on states that have violated their human rights obligations. The international mechanisms regarding human rights and fundamental freedoms can be discussed as below:

1. The UN Charter-based Mechanisms

The mechanisms conducted and actions taken by the UN Charter-based bodies in the protection and promotion of human rights worldwide are called the charter-based mechanisms. The UN

Charter-based human rights mechanism embraces organs and procedures dealing directly with human rights in the framework of the UN (Kedzia, 2003, p. 53). The Charter-based mechanisms derive their legitimacy and mandate from the human rights related provisions of the UN Charter, 1945. These mechanisms include *inter alia* the inter-governmental organs established on the basis of the UN Charter, e.g., the UNGA, Security Council, ECOSOC and the UN Human Rights Council, the Commission on Status of Women, procedures and the parts of the UN Secretariat responsible for human rights activities.

The UNGA is one of the main Charter-based bodies that is also called the chief executive body as well as the plenary organ of the UN is created under the Charter as a platform where all states can debate any relevant matter with the Assembly having a broad competence to consider human rights issues (Bailey, 1964, p. 25). As per the provisions of the Charter, the powers of the UNGA are of deliberative or recommendatory nature. Under article 13(1) (b) of the Charter, the UNGA has two principle obligations in matters of human rights: to initiate studies and to make recommendations for the purpose of assisting in the realization of human rights and fundamental freedoms for all. The UNGA plays a key role in preparing, drafting and adopting international treaties. Resolutions declaring human rights standards or condemning violations of human rights are adopted at the UNGA. Again, the Security Council is another principal organ of the UN that belongs to 15 members and acts as the executive body of the UN with its primary responsibility being to maintain international peace and security (Article 24(1)). For example, the massive humanitarian intervention was sanctioned by the Security Council in territories of the former Yugoslavia and Somalia in 1992 for human rights violations. The ICJ is the principal judicial organ of the UN which was established in 1946 as the successor to the PCIJ (Article 36). All members of the UN are *ipso facto* members of ICJ the jurisdiction of which is advisory.

The ECOSOC is another vital organ of the UN that is responsible for monitoring the overall human rights situations in states and also has the power to take initiatives in adopting resolutions on economic, social and cultural rights. ECOSOC may initiate studies on a range of subjects and may make recommendations to the UNGA, members of the UN and to the relevant specialized agencies (Article 62). It may also prepare draft treaties and call international conferences. Under article 68 of the Charter, the UNGA requires the ECOSOC to set up Commissions to contribute in the economic and social fields and for the protection and promotion of human rights worldwide. In

its first meeting in 1946 the Council established two functional Commissions: the UN Commission on Human Rights and the UN Commission on the Status of Women. The Sub-Commission on the Protection and Promotion of Human Rights was established in 1947 as a subsidiary organ of the ECOSOC and the Commission on Human Rights. The UN Commission on Human Rights is responsible for drafting human rights treaties and declarations before they are placed before the UNGA for adoption. It undertakes specialized training programs and conferences on human rights issues and also follows set procedures for considering and condemning breaches of human rights by states. The procedures are discussed below:

The Complaint Procedures of UN on Human Rights

The UN has devised complaint procedure as a mechanism to redress the violation of human rights in view of the fact that existing measures are insufficient to cope with the growing number allegations regarding human rights violations. These procedures expressly contemplate the submission of complaints by individuals or group of individuals.

(a) The 1503 Procedure/Permanent Mechanism

The 1503 procedure (ECOSOC Resolution No. 1503 XLVIII) is a greatly improved procedure as well as a universal mechanism of implementation of human rights which was devised by the ECOSOC in 1970 that authorizes confidential examination of complaints/communications from individuals and NGOs on 'situations which appear to reveal a consistent pattern of gross violations of human rights'. This is also called the permanent and confidential mechanism of implementation of human rights that empowers two Charter-based bodies, i.e., the UN Commission on Human Rights and the Sub-Commission on the Protection and Promotion of Human Rights to examine complaints which appear to show consistent patterns of gross and reliably attested violations of human rights. This procedure also involves the entire hierarchy of the UN Charter-based bodies, i.e., the UNGA, ECOSOC, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Optional Protocol - I, ICCPR 1966).

(b) The 1235 Procedure/Public Procedure

The 1235 procedure which is also called the public procedure was established by the ECOSOC in 1967 that empowers the Commission and its Sub-Commission to appoint special rapporteurs, envoys,

representatives or working groups to observe the areas of human rights violations within states and examine in detail whether there is any consistent pattern of such violation. For instance, South Africa, Cuba, Namibia and Rhodesia were the initial states subject to the 1235 procedure. The main aim of this procedure is to conduct public debate on human rights situations in a state.

(c) Other Special Procedures

The UN has also devised special procedures to deal with specific human rights issues. The UN Human Rights Council has obligations for the special procedures, including those originally established by the UN Human Rights Commission. These procedures include appointments of special rapporteurs, representatives, independent experts and working groups that investigate, discuss and report on specific human rights issues under a country mandate or thematic mandate.

Apart from the above procedures the UN has also devised so many procedures, undertaken actions, policies and strategies to deal with gross violation of human rights of individuals through communications, fact-finding bodies, special rapporteurs etc. It also undertakes programs, study, advices in the field of human rights in terms of educating the people throughout the world exchanging information and dealing with structural issues.

2. The UN Treaty-based Mechanisms

The mechanisms conducted and actions taken by the UN treaty-based bodies in the protection and promotion of human rights worldwide are called the treaty-based mechanisms. The UN treaty system includes human rights treaties, protocols and monitoring bodies under these treaties (Subbian, 2000, p. 94). The treaty-bodies or the treaty monitoring bodies are committees of independent experts that monitor implementation of the substantive provisions of the core international human rights treaties (OHCHR, 2012, p. 12). In other words, the treaty-bodies are committees of independent experts created under a particular UN treaty. They are mandated to monitor how States - which have ratified the treaty in question - comply with their obligations to implement the human rights guaranteed by the treaty, including the right to education. Most of the treaty-bodies are mandated to receive and consider reports. Each State party is obligated to submit regular reports to the relevant treaty body on how the rights are being implemented. The treaty-

body examines the report and publishes its concerns and recommendations, referred to as ‘concluding observations’.

Since the adoption of UDHR 1948, numerous UN implementation mechanisms of Economic, Social and Cultural (ESC) rights have emerged. The most significant global mechanism for defending ESC rights is the Committee on ESC rights, whose mandate is to monitor specifically the obligations of state parties to fulfill under the ICESCR, 1966. The Committee is a treaty-body that mainly scrutinizes the extent to which ESC rights are achieved by the state parties, serves as a basis for formulating policies that promote ESC rights via General Comments, and allows the public to learn about the work of their government concerning the achievement of ESC rights (ESCR-Net, 2012, p. 17).

Functions of the UN Treaty-based Bodies

The treaty-bodies may consider individual complaints from individuals alleging that a State party to that treaty has violated their rights. Individual complaints can be brought only against a state that has recognized the competence of the committee established under the relevant treaty or when the state became a party to the relevant Optional Protocols. Some treaty bodies may initiate country inquiries if they receive reliable information containing well-founded indications of serious, grave or systematic violations of the conventions by a State party. In addition, some of the treaty bodies may also consider inter-state complaints. Each of the treaty bodies publishes its interpretation of the content of the treaty provisions in the form of ‘general comments’ or ‘general recommendations’.

Each treaty has a unique system for its implementation, ranging from general and specific reporting procedures to quasi-judicial and judicial mechanisms involving the adjudication of complaints brought by individuals or groups of individuals and by other States. These various procedures can in many respects be said to be complementary, although they have slightly different immediate purposes, the overall goal of human rights protection is identical in each case. The reporting procedures have the function of making regular and systematic inventories of progress made in the implementation of the treaty obligations, with the aim of creating a dialogue between the relevant international monitoring organ and the State party concerned for the purpose of assisting the latter in introducing the adjustments to domestic law and practice required by its international treaty obligations. These reports are examined and discussed in public and in the presence of representatives of the State

party. In preparing their periodic reports to the various international monitoring organs, the States parties are obliged to provide in-depth information not only about the formal state of the law within their jurisdiction, but also about the manner of its practical application. When preparing these reports, the States parties may well also need the assistance of members of the various legal professions.

In fact the scope for international implementation of human rights norms is limited as human rights are sometimes deemed to be a national and not an international issue. Koh (1999, p. 19) states that, international human rights law is not enforced, you might say, as human rights norms are vague and inspirational, as enforcement mechanisms are toothless, as treaty regimes are notoriously weak, and as national governments lack economic self-interest or political will to restrain their own human rights violations. So, if the question is “how are international human rights law enforced?” many of you might answer: “not at all, or hardly at all.” If you hold to this common, skeptical view of human rights enforcement, you would say that international human rights law is not enforced, like “real” domestic law, instead, it is only occasionally “complied with,” by nation-states acting out of transparent convenience or self-interest (Koh, 1999, p. 38). In fact, the non-enforcement of international human rights is often the result of calculated political decisions. As Donnelly points out:

“In the absence of a power capable of compelling compliance, states participate in or increase their commitment to international regimes more or less voluntary. Barring extraordinary circumstances, states participate in an international regime only to achieve national objectives in an environment of perceived international interdependence... states will relinquish authority only to obtain a significant benefit beyond the reach of separate national action or to avoid bearing a major burden” (Donnelly, 1986, p. 620).

A commonly highlighted political explanation centers on checks and balances, which provide constraints that make it more difficult for executives to ignore international legal obligations (Hillebrecht, 2011, p. 7). It is essential to mention here that international procedures can never be considered to be a substitute for efficient legal procedures at the domestic level. Human rights are made a true reality at the domestic level by the domestic authorities, and the international complaints procedures are subsidiary to the available domestic systems for safeguarding the individual: they provide a

remedy of last resort, when the internal mechanisms for ensuring an efficient protection of human rights standards have failed.

Concluding Remarks

The notion of human rights and violation thereof is as older as the creation of human rights. Despite the speedy growth of human rights law over the years, gross violation of human rights continue to take place throughout the world where there has been little progress in achieving universal respect for and observance of human dignity and freedom. In order to stop this violation, the UN was established that has been striving to protect and promote human rights since its inception. The struggle for securing human rights is an ongoing process. While ratification and accession of global human rights instruments continue to increase, closing the implementation gap remains a major challenge for the realization of human rights. The future prospect of enforcement of human rights depends upon the consolidation and sustainability of the good governance; the sustainability of the good governance is dependent on the institutionalization of it and the institutionalization of good governance is dependent on the rule of a democratic law.

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