

Nuremberg
Trials

Human Rights

International Bill of Rights.

It consists of

- UDHR (Universal declaration of HR) adopted by UNGA on 10/12/1948 as well as.
- Intⁿ Covenant on Civil & Political Rights & its 2 optional protocols
 - on death penalties
 - on complaints procedure related to civil & political rights
- Intⁿ Convention on cultural, social & economic rights & its optional protocol.

Legal Status.

- UDHR is voluntary in nature but it is recognised as customary law to be followed by states.
- Optional protocols are binding on countries satisfying these protocols

Vienna Conference on Human Rights, 1993

have explained following features of Human Rights

- Universal.
- Indivisible
- Inter-dependent

Uf/Intⁿ mechanism on Human Rights.

- UNGA
- UNSC

It can take enforcement actions

- Office of UN High Commissioner for Human Rights.

Tasks: Promotion, Protection & implementation of Human Rights.

Officer is answerable to UN Secretary General.

He is part of UN Secretariat.

- UNHRC ON Human Rights Council.

It is a major watchdog body with 47 members.

- Intⁿ Criminal Court

Outside UN system

— if UN PS takes veto.

11/11/14

UN Human Rights Council (UNHRC)

History of UNHRC

UNHRC was created by UNGA in 2006.
It replaces UN Commission on Human Rights.

UN Commission on Human Rights

It was created by EcoSoc (Eco & Social Council of UN).

• It had 53 members

• Members were elected for 3 yr term

• No restriction on maximum no. of terms

• In sequence

• Members were selected by EcoSoc.

• UNCHR have played important role in evolution of intⁿ conventions related to

Human Rights. Later on countries like

USA had dissatisfaction with the working of commission. The immediate factor has

been reelection of Sudan & Libya to

Human Rights Commission.

| Darfur
crisis.

Hence

Hence a new body has been created known as

UNHRC.

• Total strength is 47

• UNHRC is established by UNGA & is

directly accountable to UNGA

• Members are elected by absolute majority in UNGA

• Maximum 2 terms in a sequence

• Members elected for 2 yrs at a time

• UNGA has a power to suspend membership

in case any sitting members' record or action

violates Human Rights norms. Suspension can be by 2/3rd of members of UNGA

- It is mandatory to have 3 sessions / year & it should meet for not less than 10 weeks.
- Special sessions can also be called if 1/3rd of members desire.
- Members elected should have demonstrable commitment towards Human Rights & contribution in the field.

Function of UNHRC

- Promote universal respect for protection of all Human Rights.
- Address the situations of violations of Human Rights (Gross & systemic violence)
- Effective coordination & mainstreaming of Human Rights within UN system
- It can recommend the case for action to UNSC through UNGA.
- It has various mechanisms available for above functions
- It conducts universal periodic review of countries
- It informs UNGA about status of Human Rights.
- It has a complain procedure. Any individual or any state can make a complain
- Advisory Procedure

HR - grass root democracy.
go hand in hand.

Analysis of UNHRC

- It is an improvised version over Human Rights Commission. In the past it has taken actions on Sri Lanka. It has passed resolutions against Israeli violence in Gaza. However in recent times it has been accused of being hijacked by Western countries or carrying forward the agenda of USA.
- Efforts should be made that its actions should appear neutral.
- No. of times it has not been effective in implementing the resolutions because much depends on cooperation of state or will of int'l community.

International Criminal Court (ICC)

- It was created in 1998 by Rome Statute
- It is out of UN system but it works in coordination with UN.
- Purposely it has been kept out of UN system so that its actions should not be dependent on UN mandate.
- By July 2012, 122 states have ratified the treaty & technically known as 'State Parties to Statute'.
- Prominent countries out of ICC are
USA, Russia, China, India, Israel. | Pakistan?
- These countries keeping themselves out of ICC impact ICC's resources, technical capacities.

Topic

scope & ultimately weakens the cause of Human Rights & adversely impacts the credibility of these countries w.r.t. protection & promotion of Human Rights.

Nature & Scope of ICC's Jurisdiction

- It is a permanent criminal court different from adhoc tribunals constituted for ~~HA~~ at Hague Rwanda, Serbia.

- ~~HA~~ Its Jurisdiction is different from ICT.

In ICT only states can be the party. whereas in ICC individual can also be a party.

It can initiate investigation, prosecution & trial of individuals accused of "most serious crimes of concern" to the int'l community as a whole,

namely

- crimes of genocide

- crimes against humanity

murder, enslavement, forcible transfer of population / deportation, torture, rape, enforced disappearance, crime of apartheid & other inhumane acts

- war crimes

not observing the customs & laws applicable in armed conflicts e.g. Geneva convention

- murder, mutilation

- Cruel treatment & torture

- attack against civilian population

- rape sexual violence

recruitment of children below 15y. into armed forces.

It can also initiate proceedings for crime of aggression.

i.e. planning, preparation, often act of aggression using armed force by state against sovereignty & territorial integrity or political independence of other state.

Note: This will come into effect once ratified by $2/3^{\text{rd}}$ majority of states from 1/1/2017.

How it can start action?

- On the request of state party
- On the request of state not party but accepted jurisdiction of ICC
- suo motu
- on recommendation of UNGA/ UNSC

Nature of ICC's jurisdiction

- It does not supplement domestic criminal justice system, It only complements it.
- Only when there is a manifest failure by the state or lack of ability / capacity in states, it takes up action.
- It is dependent on member states for enforcement
- It can't award death penalty
- Max. punishment can be 30 yrs of imprisonment.

Should India join / accept ICC Jurisdiction or should avoid?

- Govt. View

- Does not favour accepting Jurisdiction of ICC
- India is apprehensive that anti India status may use the platform to embarrass India.
- India does not need ICC, it is perfectly capable of dealing with such crimes.

- It has independent judiciary, Human Commission, free press, vibrant Civil Society.
- India supports the sovereignty of state in criminal justice system.
- Countries like USA, China are out of ICC.
- India has some significant north security concerns & faces insurgencies in many regions.

Arguments in favour of India joining ICC

- It will strengthen India's claim for permanent seat in UNSC.
- It will enhance India's credibility w.r.t. its commitments towards Human Rights.
- It can establish accountability of armed forces.
- It can be a benchmark for civil servants.
- It can address internal security concerns or alienation of people from govt. Its a self disciplinary measure that will add to soft power of the country.
- It can have some impact on countries like USA to join ICC.

It will