

INTRODUCTION.

6/1/20

1. Relevant documents

1.1. UN Charter

1.2. UDHR

1.3. ICCPR

1.4. ICESCR

1.5. History of IHRL - Thomas Beenthal

1.6. GA 73rd session.

2. Religious beliefs & IHL

2.1 universality is difficult as IHL & HR law influenced by religion.

2.2. IHL & HR imposes a sense of responsibility on the state & int'l community.

2.3. HINDUISM - moral sanctity.

2.4. ISLAM - equity & equality in a set context

2.5. BUDDHISM - respect for all, equality, charity

2.6. CHRISTIANITY - equality.

2.7. Ultimately, culture & background differs. Different jurists like Rousseau also have opinions which have received recognition. This diversity has often been a hurdle to universality of HR law.

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3. Intervenⁿ of IHL.

3.1 eg. Libya - UN envoy asks other nations to leave Libya | UNSMIL.

UNSC discussion post attack on a military academy in Tripoli & death of cadets.

4. HISTORY

4.1 Human rights history v. History of HR law.

4.2 Theories form the foundaⁿ & eventually led to codificaⁿ — Salmond, Austin, Bentham.

4.3 What we find today is based on religion.

Major 5

4.3.1 codificaⁿ of UDHR.

all religions participated — Islam (ME)
Buddhism, Hinduism (Asia),
Christianity (Europe, Americas)

4.4 First codificaⁿ in realm of HR — ILO

foundaⁿ
- milestones

4.5. Culture & Philosophy

4.5.1. 400 BC — Sun Tzu

— Every individual should be relieved from anxiety.

— clear recognition of rights.

Progression

4.5.2. 400 BC — Greek philosophers.

— development of natural law theory

[Human rights & Natural Law]

No law
Nat. law
Nat. rights
HR

eg: Art. 21 — "no person shall be deprived of life & liberty." — natural law.

"except by procedure established by law"

— positive law.

focus on
morals
&
natural
law.

4.5.3. 1795 — 1750 BC Babylon.

Code [earliest in HR]

— development of customs

— evil does to be destroyed.

4.5.4. 300 BC — Ashoka, India

He developed a law of armed conflict
eg: civilian life & property to be protected,
battle only from sunrise to sunset.

An important contribuⁿ to Int'l H Law.

~~4.5.5.~~

4.6. Rights — theories & law.

4.6.1 John Locke

- every person has natural rights
- every person is equal
- state is to preserve these rights —
individuals do not surrender their
rights to the state.

4.6.2 Jean Jacques Rousseau

- man is born free

4.6.3. Thomas Maine

- unity of mankind & equality

4.7. 1188 AD — Kingdom of Lyon

4.7.1. rights — to assembly, fair trial, life &
dignity, right to have home & prop.

England 4.8. 1215 → 1628 → 1679
Magna Carta Petiⁿ of Rights Habeas Corpus — civil rights Act

USA 4.9. 1776 — Declaraⁿ of Independence.

Human rights are inherent.

France 4.10. 1789 — Declaraⁿ of Rights of Men & Citizens

USA 4.11. 1791 — Bill of Rights

→ INT'L ORG — 1865 & 1874 — Telegraph & Postal Union

Court looks at principles → det. Custom
1. opinio juris 3. jus cogens
2. erga omnes

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5. Birth of Int'l Humanitarian Law

5.1 Henry Dunant - Battle of Solferino
idea of law of armed conflict
— on humanitarian grounds.

SOURCES Int'l HR Law

6. ICJ. on Customary Int'l Law w.r.t. HR

• North Sea Continental Shelf case 1969

* — consistency of practice

Ar. 38(1)
Claw

(how long? not a very important
criteria)

principle of
erga
omnes

↳ towards
everyone

* — "evidence that this practice is rendered
obligatory by existence of rule of law
requiring it"

— good faith reqd.

— applicable on individuals. & ^{Germany v. Denmark} Netherlands

↓
customary
law

7. Opinio juris (Opinion of law) ★

— practice of govt.

— there is no written customary law

— this opinion of law, w/o a practice if it
is, it would not be considered as
customary law

— It must not just be the practice of govt,
it must be the practice of court &
Parliament.

Applicaⁿ: — India's reservaⁿ. CEAFDAW
conven^t of eliminatⁿ of all forms of
discriminatⁿ agst Women.

UN Charter
General Assembly
Arts 5
Int'l Law
CIL

General
principles
of Int'l
Law

Cosfu
Channel

8. WHAT ARE HUMAN RIGHTS.

Office of High Commissioner of HR

— CAA debate

Statement - "religions' name not written."
"discrimination" of ICCPR

Counter: We are under no obligation to grant citizenship.

Counter: Internal matter

⇒ However, UN Charter - obligation of intl community towards citizens of the globe.

Ar. 55(c) & Ar. 56.

②

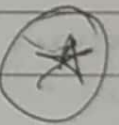
9.

of W

North
Sea
case."Towards
every
State"No state
can deny

① Principle of erga omnes. → Ar. 55(c) & 56

③



— est. by intl community

— obligation of the state to give effect to intl law that it has consented to.

You cannot make a law that is discriminatory

— obligation of intl community to question.

States have responsibility to intl community

— applicable to everyone [these rights v/ Ar. 55(c) / 56 - applicable on all]

10. EXCEPTIONS TO ERGA OMNES

1. Necessity

2. in the name of self defence

Q. Is customary law an excepⁿ to erga omnes?

gen. practice - every State
aboliⁿ of death penalty
Optional protocol to ICCPR -
Ar. 38(1) - ICJ Statute
(b) - int'l custom has evidence of general practice accepted by law.
Now more focus on behaviour of State
- because of custom rather than practice
[old philosophy - universal applicaⁿ]
↳ in the same spirit so that no state is left out of its obligaⁿ w/ ICCPR

Oliver
de Schutter
Book
on
customary
law.

Argument:-

1. GA to decide what is custom
2. consider reports of rapporteurs, state, NGOs etc.

instead of letting the tribunal decide at the time of conflict

"behaviour has never been observed in int'l forum while giving label"
the "why" of behaviour needs to be ascertained.

★ Custom not to exclusively rely on 38(1)
↳ need to look at behaviour of State rather than just practice

States are least bothered by other states' practice unless the practice affects their citizens - "protect my citizens"

Int'l com disagrees - this can't be °°
it discriminates against their own citizens.

- OLD & modern understanding of customary law

11. @ UDHR

- 21 articles — civil & political rights [CPR]
- 7 articles — economic, social & cultural rights [ESCR]
- 1 — duty of individual.
- 1 — interpretatⁿ not to destroy the object of UDHR

individualistic approach — protectⁿ

- CPR — protectⁿ of individuals.
- ESCR — group of peoples.

eg: 2018 Sabarimala

The SC's decision was individualistic

- focus on civil & political rights

13/1/20

53.
A. 64
VCLT

News 1 — DRK ends test moratorium.
jus cogens — int'l law that compels the int'l community.

Why
do we
say that?

HR a part of UN Charter?, CIL?

Who decides crimes against humanity?
Violaⁿ of treaty?

News 2 — Herero ethnic group targetted in DRC.

Q. How is erga omnes a principle to all custom?

How does the int'l community accept the practice of a state as custom?

What happens when state practice clashes w/ CIL?

Ar. 38(1) ICJ Statute

↳ custom/practice can be recognized state practice on acceptance of int'l community.

It shouldn't violate human rights law. Doesn't matter if the state has signed or not.

In North Sea Continental Shelf case (1969)

Germany v. Denmark & nor.

explanaⁿ of Ar. 38(1) ICJ.

- practice of state is to be consistency (diff. from dual - immaterial)
- rule of law requires it. (previously done)

repeti^{on}

Ar. 38(1)(b)
ICJ Statute

(2)

Q. If there is a hierarchy for sources? 15/1/20

Q. If UDHR is customary?

• Nicaragua case

• Tehran case

• Corfu Channel

• East Timor — self-determinaⁿ

essential principle
of CIL

Q. Universal nature of HR convenⁿ.

UDHR

int'l

customary
law

1. legal framework - binding on only signatories in bilateral treaties, multilateral but HR convenⁿ applicable to all.
2. responsibility towards all on your territory, not just your own citizens.

3.

- VCLT maintains the hierarchy,
 - pre-emptory norms given preference.
 - bilateral treaty provisions can't be in contradictory to such norms.

eg: environmental clearance.

To
safeguard
unilateral
provisions
on HR

- Jus cogens - Art. 53 & 64

princ. of int'l
law

Art. 53 - treaties conflicting w/ general, pre-emptory norms (jus cogens) of,

GPIL would prevail over the treaty.

Art. 64 - emergence of ^{new} pre-emptory norms of GPIL (jus cogens)

- Before 1969, any such conventions were to exist.

Art. 4 - VCLT not retrospective.

Not a problem, the time at which dispute arises is material. If after 1969, then jus cogens to apply.

Art. 64 nullifies the effect of Art. 4.

UDHR

- committee

- UNSC resoluⁿ w.r.t. HR. — obligⁿ?

21 + 7 + 1 + 1

Art. 1 • born free & equal. in dignity,

2 • everyone entitled to all rights set forth here in this declarⁿ

3 • life, liberty & security of person

4 • no slavery

5 • no torture

6 • right to recogniⁿ everywhere as a person, before the law

7 • all are equal before the law

8 • right to have effective remedy

9 • no arbitrary arrest.

10 • public & fair hearing (trial)

11 • right to presume innocent till guilty

12 • no arbitrary interference in privacy

13 • freedom of movement + leave country

14 • right to seek asylum

15 • right to nationality

16 • right to marriage

17 • right to property

18 • right to religion

19 • manifestaⁿ of religion

20 • freedom of opinion & expression

21 • peaceful assembly

22 • right to vote.

20/1/20

★

- 22. social security
- 23. right to work
- 24. working hours.
- 25. standard of living - motherhood, childhood
- 26. education
- 27. participate in cultural life
public spaces to marginalized groups
both +ve & -ve role of govt.
scientific, literary, artistic protection - IPR - HR
- 28. "obligation" on the state to help people realize rights
- 29. duty to community.
- 30. No interpretation that destroys the object of UDHR.

20/1/20

RESPONSIBILITY & OBLIGATION of States in HR law

eg: Syrian conflict

violation of laws of war & Convenⁿ of rights of Child [CRC]

"States have well-defined obligation to protect children" - even from statelessness

Applicaⁿ of IHL - at the time of armed conflict - doesn't mean that responsibilities v/ HR law can be discarded.

Ref. book →

Oliver - State obligaⁿ - Ch-2.
de Schutter

- regional mechanisms to protect human rights & its promotion.
- in addiⁿ to intl obligations.
- eg: ECHR in EU + UDHR

★

creaⁿ of an obligaⁿ

- territory

- jurisdicⁿ of sovereignty

eg: India has jurisdicⁿ. — where India has sovereignty.

Q. conflict ridden areas

+ territory of Syrian govt. → jurisdicⁿ of occupying country. (military)
What if HR violaⁿ there?

Obligaⁿ
created on
state

ICCPR - "within its territory & subject to its

A-2 jurisdiction"

- effective control + sovereignty

protecⁿ.

Art. 2(1) CRC

- "to each child w/in their jurisdicⁿ"

- obligaⁿ of State.

★ Art. 4(1) - Convenⁿ on rights of disabled persons

★ Convenⁿ - ICESR - Art. 2.

"irrespective of place where alleged violaⁿ takes place."

- ICJ - 2004 - Israel & Palestine - consequences of contrucⁿ of wall in occupied Palestine.
- NATO - Syria & Libya - int'l community says that resp. of the state whose territory on which violations take place.

REGIONAL ORG.

- African Union - charter (extra-territorial)
it doesn't clarify jurisdiction. All states are responsible for violence on their territory.

- European Declaration of Human Rights

- supra-national mechanism

EU & Council of Europe

"Secure to everyone w/in their jurisdiction" to be understood w/ sovereignty.

- Inter-American

- "to all persons subject to their jurisdiction"
- full & effective control

eg: NATO - UNSC resoluⁿ - understandg state obligⁿ intervenⁿ by int'l community in Syria & Libya

Z

- 2011 - removing Gaddafi

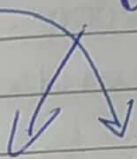
Responsibility must come w/ extra-territorial intervention.

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22/07/20

OCCUPIED FOREIGN TERRITORY. EXTRA-TERRITORIAL OBLIGATION.

check



ECHR
European
Court of
HR (ECHR)
Applicaⁿ of
European
Convenⁿ of
HR (ECHR)

- *Liozidou v. Turkey* (1996) Para 45
- *Ilascu & Ors. v. Moldova & Russia* (2004)
- *Cyprus v. Turkey* (2001)
- *Assanidze v. Georgia* (2001)

legal v. illegal
effective control.



EXTRA-TERRITORIALITY

- Whether a State ^{is} ~~may~~ under the obligation to comply w/ HR outside its national territory?

Situaⁿ 1: State exercises extensive powers outside its borders by sending state agents abroad. (w/ or w/o assent of the other State)

report
before HR
Committee
(ICCPR)
- members
constitute
this

- Lopez Buizos v. State of Uruguay [observed by HRC in 1981]
ratione loci — restricted to territory

(app of HR only in own State)

Lopez deported (exile) to Argentina ^{territory}.
— status as refugee [Refugee Convenⁿ, 1951 signatory] — principle of non-refoulement: the state can't send him back unless he wants to.

Grounds for this status: — fear of persecuⁿ
Uruguay kidnapped Lopez, then Intelligence forces — they asked the assistance of Argentina — detained for 2 weeks.

(inhumane & degrading treatment)

Lopez then illegally transported to Uruguay along w/ other Uruguayans who were not refugees.

→ Which State's responsibility w/ ICCPR, Refugee convenⁿ, other treaties?

Observaⁿ of HRC — Responsibility of Argentina since he was given refugee status by Argentina.

doc sent
22/11/20 Pg. 61 - 110 — today's discussion.

Ar. 33 of
Refugee
Conven"
7W
Ar. 5, 14
UDHR

^{self}
Non-refoulement theory — doesn't have effect
of extra-territoriality.
Even if not a member of Refugee Conven",
obligatⁿ v/ UDHR applies.
Once a conven" signed, A state guarantees
that there will not be a violaⁿ of HR in their
territory.

Situaⁿ 2: SC of US overruled by Court of
Inter-American HR.

• Haiti v. USA

A few Haitians fear persecutⁿ in Haiti, left
by boat — on high seas — US intelligence
comes to know — ^(attempt) prevented them from
entering territory of US. — entered anyhow

Whether act of denying entry violaⁿ of
obligatⁿ?

SC of US — USA has not violated any law.

No US const. law applies outside the
territory — rights preserved to deny
entry by US Navy.

Refugee law applicability only when
they enter US territory, not outside

→ Inter-American Court of HR :-

It had ~~not~~ extra-territorial effect.

[Refugee conven" & theory of non-
refoulement]

Liability of US

imp
Doc.
for today
discussion

- reservations to HR treaties, avoiding obligations
Daniel Hill, SAGE, Jstor
- ILC guideline on "reserva" to HR treaties 27/01/20
European J. HRL - pgs 1136-1144 3.1.12 - 3.1.5.6
- "reserva" to treaties - word doc - VUT.

- ICJ opinion on Genocide conven" case.

- defined | "object & purpose" | of reservation

Situation 3: Assistance / improving the
"situa" of a State by int'l community
where there is a lack of resources.

By resolu" of UNGA

— financial assistance by int'l community
HR protection.

Not a debt

TYPOLGY OF OBLIGATION.

Duties of State (Theory)

1. right to ^{be} respected. (of individual) ^{should avoid disrespect & deprivation}
2. protect individual rights
3. provide environment for fulfilment.

— How to read these theories, in practice

	Theory	Practice	Illustra"
10	respect	Avoid depriva" eg: CAA protest permission denied → right violated (depriving)	Avoid being silent at times of oppression, take appropriate action. eg: religious conflict.

2. to protect

in existence
Laws — not implemented in spirit.

eg: inhumane treatment by police office while in custody

ExPC

Compensa to victim
suspension
State agents violated human rights

Responsibility of State.

Philosophy earlier —

State to bear compensa

Now → individual salary.

Ref. working hours

to determine viability

(1) by enforcing a duty

(2) by designing institutions that avoid the creation of strong incentives to violate duty.

eg: religious conflict.

— Special Investigative Team (SIT), rehab. awareness.
→ only give recommenda

They will read & merely recommend action to state.

← in rela to Viola of constitu principles.

3^o assistance

economic & social.

HR - Reservations. Articles 19-23 VCLT.

Every State is entitled to make reservations.

ARTICLE 19

formulate

Every State is allowed to make a reservaⁿ unless

1. such reservaⁿ is prohibited by the treaty

eg: CCW,
anti-personal

mines
treaty,

Kyoto
protocol,
Stockholm
declaration

RUD - declaratory / interpretative declaratory /
understanding is not a reservation.

If a State says that they'll interpret a provision in a particular way - allowed.

2. treaty provides only specified reservations
(HR treaties don't usually provide)

3. incompatible w/ object & purpose.

PROBLEM? No definiⁿ of "object & purpose"
- state isn't allowed to make any general
or vague reservation.

Reservation of Kuwait in ICCPR

- The right exercised as mentioned
in ICCPR must be w/n the ambit of
Kuwait law.

This reservaⁿ was rejected.

objecⁿ by Finland, Sweden, Norway &
Germany

Who
decides?

Text?

No int'l
authority

& no
test
available.

Only States
decide.

(procedure)

29/1/20

PROCEDURE for passing reservation -
no state should object.

ARTICLE 20 to be in writing if given at the time of discussion of reservation then within 12 months

Acceptance of & object to reservation

- US reservation on ICCPR

- capital punishment even for persons below 18 years of age
- reasonable restriction on speech

- Finland reservation

Art. 14(7)

2. Who decides if reservation goes against object & purpose?

- procedure regarding reservation w/ Art. 19, 20 VCLT

5 headings

	formulation	Art. 19
	accept & object	20
VCLT	legal effect	21
	withdrawal	22
	procedure	23.

- India's declaration

- reserving rights during Emergency

ARTICLE 20

(2) "It appears from the limited no. of negotiating States"

- + Those states - party to convenⁿ - no objecⁿ
- + States - party to convenⁿ - raising objecⁿ
- + States not party to convenⁿ.

These
are
all
categories
of States
in the
discussion

"When it appears -
if the applicaⁿ of the treaty in its
entirety b/n all the parties is an essential
condiⁿ of the consent of each one to be
bound by the treaty, a reser^{va} requires
acceptance by all the parties."

ARTICLE 21 - legal effect of reser^{va}.

Art. 21(2)

r/w

Art. 4(c)

effect w.r.t
objecⁿ
negt.

(3)

"do not apply as b/n 2 states to the extent
of the reservation"

ARTICLE 22 - withdrawal of reservations

- "may be done at any time"
- "consent of state ~~objection~~ which had
accepted the reser^{va} not reqd."

automatically applies on those States
which had objected the reservation.

On withdrawal, automatic applicaⁿ of
treaty b/n those two States.

Illustraⁿ - CAT - Convenⁿ against torture.
Questioning India for not signing.

Daniel Hill — article sent by sir.

RVD — differs based on diff democracies.
legal effect only w/ reservations

— No "recogni" for understanding or declaration — as a reservation

— no recogni" in VCLT.

But States use underst'g & declarat' to clarify — no legal effect as "non-binding"

— not a denial of the duty under a convention.

Only reserva" has legal effect.

THEORIES applicable on democratic countries

1. MONOIST — acceptance of int'l instruments

2. DUALIST — on acceptance, require separate national legislation

on ratifica", such instruments will be considered a part of domestic law.

As per UN Data, monoist countries do not usually have a lot of reservations in comparison to dualist countries.

↳ How can they make reserva"? By drawings comparison to their

or practice ← custom, conflict w/ or national law is less.

2 steps
used to convince
the int'l community

U&D → in addiⁿ to reservation.

Other states can still demand under
the convention

2nd distincⁿ Liberal States & Other States
(parliamentary
democracy)

Reasons, grounds & consequences of
reservaⁿ

- ① When the State demands RVDs, that
itself does not defeat the object &
purpose of the Convenⁿ. It is an entitlement
of the State.
- ② RVDs are not binding b/n the objecting
& reserving State.
(liberal)
- ③ More democratic state enters into the
RVD so that the existing behaviour of
the State can be characterized as
compliance
(to show int'l community that the
State has strong domestic law)

4/1/20

Int'l HR Mechanism

11 diff. offices dealing w/ this

- HR Council & or. org.

— Office of High Commissioner of Human Rights.

(OHCHR) — 1993

observer
— highest
— body

regularly comments on HR situations in the world & has the authority to investigate situations & issue reports on them.

— HR Council — gets the mandate to appoint experts. — Working Groups

— HR Treaty bodies

10 in number + optional protocols

— Special procedures — indep't experts working on voluntary basis.

UNGA passes resolution.

— UNDG — HRM

UN development group's human rights mainstreaming — mechanism

— Special Advisors on the "Prevention" of Genocide & Responsibility to Protect. (R2P)

signal
provider

acts as a catalyst to raise awareness of the causes of genocide...

— UNSC.

deals w/ HR violations often in conflict areas.

4/2/20

- 2002 & 2012 resoluⁿ on arms embargo, restrictions on travel etc. by SC.
- Third Committee of the UNGA focuses on social, humanitarian & cultural examines a range of issues & addresses imp. development questions.
- Secretary General.
appoints special representatives.
 - 4: Special Rep. of Secretary General for Children and Armed Conflict.
Optional Protocol 2 of Convention of Rights of Child.
- UN Peace Operaⁿ.
long term - DRC.
This body sends UN reps to the field - first hand info
- Commission on Status of Women
UN Women serves as its secretariat.
eg: Libya — observe — to see if acⁿ reqd.
UNOHCHR → to obtain first hand info
HRC — give info.
Then if needed appt of experts
Then involvement of UNGA & UNSC.

UN office of HCHR.

I. Charter based bodies

1. Human Rights Council
2. Universal Periodic Review
3. Special Procedure.

II. Treaty based bodies.

1. CAT
2. CRC
3. CMW
4. CERD
: CEDAW.

committees.

These committees are established on the basis of conven.

(10) Human Rights Committee v/ ICCPR.

India is a party to 6 conventions & 1 optional protocol.

UDHR

CEDR

ICESCR

CRC - OP

CRPD.

CAT - signature.

PMW - signatory.



created in 2006 — replaced the UN commission on HR

5/2/2020.

UNHRC

— US withdrew from UNHRC

— election — 47 states
India is a member till 2021.
inter governmental body.

— MEMBERSHIP

equitable geographic dist.
not eligible for immediate re-elec after
2 consec. terms.
Term - 3 years.

Switzerland. discussion — status
— military.
— membership.

— MECHANISM

1503

2 Working Groups — independent

investigative

— on Communications & on Situations.

5 members each.

— confidential. to ensure state cooperation
— victim oriented approach.

2012
-2016
evaluation

— 2017 UPR — Universal Periodic Review
India's situation.

Criticism — pdf sent by sir.

documentaries on UN Mechanism.

REGIONAL MECHANISM

(T.I.)

Inter American Mechanism.

Org. of American States

1.1. recognized languages: English / Spanish, Portuguese, French.

1.2. 19 documents

- 2 statutes

• Statute of the Inter American Commission on HR

• Statute of the Inter American Court on HR.

Accepting the American Convenⁿ on HR does not lead to automatic acceptance of jurisdiction of court.

[It was only 1979 it came into operaⁿ although set up in 1959]

1.3 Inter American Court & Commission perform complementary roles.
Contentious situaⁿ

① Individual v. own state

② Individual v. another state where he resides.

③ State v. State

In all three situaⁿ, the litigant/complain^t has to approach the Commission first.

//_

The Commission will check admissability criteria.

Proper channel to approach the Court :-

* - Inter American Court has contentious & advisory jurisdiction

- when individual approaches Commission:-

① Check admissability by investigation to verify if the complained situation exists.

(FS)

② Friendly settlement will be promoted if facts found in support of complaint.

where criminal
repercussions
arise
← - if violaⁿ of CPR → FS not possible

- if violaⁿ of eco or soc rights - possibility

Q. What reliefs/remedies?

Direct to apex court of violating state

No regional courts enforce their decisions.

③ Communicatⁿ of admissability to State & request a statement from that State.
Report - "situaⁿ in your state. Do the needful"

forces for
norm

- Report submitted by Commission
- Complaint
- ~~Response~~ Response

11/2/20

Observed
by
Court &
Comm
when
there is
an issue

- exhaustion of local remedies
- res judicata
- w/n 6 months of judgment passed by apex court of country, app can be made to IAC
- prima facie rule
- irreparable injury

• Ms. I.V. v. Bolivia (2016)

informed consent to medical treatment & alleged forced sterilization.

- fled Peru - granted refuge in Bolivia
- She went to hospital → sterilized.

She claims there was no informed consent.

Commission concluded that surgical intervention constituted a violation of her physical & psychological integrity → reproductive autonomy is a part of right to live free of violence & discrimination, right to access information & to a priv. & family life.

Articles 5.1, 7.1, 11.1, 11.2, 13.1, 17.2 of American Convention.

11/2/20

The Commission also concluded that the State did not provide effective judicial remedy in response to such violations.

Meir's Report

1. full repair - compensation for material & moral damages suffered by her.
2. high quality medical treatment.
3. direct to govt. to investigate & take appropriate action
4. adopt non-repetitive measures so that similar incidents don't happen.
[promotion of HR]
5. Review existing policies on informed consent practice in hospitals.

Constitutional

1. Investigate flawed practices of Judiciary that led to extended delays.
- 6 years for decision before apex Court.

Court

2015
- 16

1. Recognizing the importance of personal autonomy as a constitutive element of personality, informed consent is sine qua non of medical intervention.
2. Affects dignity.
3. Violation of Article 32 of the Constitution (Women's right)

PPT + Factsheet #71

— procedure of Commission & Committee

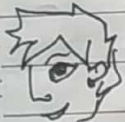
Analysis: reading reproductive rights into other provisions



• The case of Velasquez Rodriguez v. Honduras (1988)

• Barrios Altos v. Peru (2001)

• ~~Mayagna (Sumo) Awas Tingni Community v. Nicaragua (2001)~~



⇒ Velasquez v. Honduras

Issue: disappearance

Art. 42 of Rules of Procedure — presumption of validity of facts alleged if State doesn't cooperate.



— Report of Commission — violaⁿ of right to life [Ar. 4] & right to personal liberty [Ar. 7]



— referred the case to court



"American Convention doesn't explicitly criminalize disappearances. However, forced disappearances constitute multiple & continuous violaⁿ of rights of Convenⁿ"



— Ar. 1, 2, 7

(due) (right to life)

(right to personal liberty)



12/2/20

The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge. and to invoke app. procedures to review the legality of arrest — Violation of Article 7.

The court interpreted Article 5's provisions regarding cruel, inhuman and degrading treatment, concluding that they prohibit "incommunicado deten"
— harms the psychological and moral integrity of the person.

Disappearances involving clandestine executions w/o trial & clandestine burials violated the right to life under Article 4.

International Humanitarian Law.

13/2/20

- Barrios Altos v. Peru.
- Law challenged. — "Amnesty law"
- Clear involvement of govt in gross violaⁿ of HR — using law to intervene or stop judicial process.

New/ — The judicial review of past laws prevented.



- The case was brought before the Comiⁿ in 1975
State defended laws & refused to investigate
Commission recommended the matter to Court.
- The State, after unsuccessfully trying to withdraw its recognition of the Court's contentious jurisdiction, recognized its international resp. in the case for the violations of Articles 4, 5, 8, 25, 1 & 2 of the Convention.
- "This Court considers that all amnesty provisions, provisions on prescription and establishment of measures designed to eliminate resp. violate are inadmissible^o they are intended to prevent investigaⁿ."



EUROPEAN MECHANISM

- 2 parallel systems
EU & COE (Council of Europe)
|
27 member states

European
Union

Economic
&
social
rights

- OBJECT: cross border business. - to promote
- They have treaties - providing for dispute resoluⁿ by ECJ

* Council of Europe
 promo" & protec" of HR
 47 member states - parties to conven".
 Core HR treaties. → ECHR — ECTHR
 — European Commission is defunct since 1998



MILESTONES

- 1949 — ECHR [a replica of UDHR]
- 1950 — Came into force
- 1959 — Establishment of ECTHR
 [a comparison w/ ACourt → no separate declaratⁿ reqd.]
- 1960 — judgment passed [1st]
- 1998 — protocol — full time court to be established.
 Court gets power to accept applicaⁿ filed directly by individual / NGO on behalf of victim.

Trivia

21,600 judgments passed till date.

Most cases against

Turkey, Italy & Russian Federaⁿ.

- Joining of applicaⁿ if CoA similar.
- [Ar. 6 (right to fair hearing), 5 (liberty & security), 2 (life), 3 (prohibiⁿ of torture inhumane, degrading treatment).
 → most no: of cases on these provisions.
 Mostly against Romania & Russian Fed.

2010 — Admissibility criteria — 4th point protocol 14 — "applicant has to show that he/she has suffered significant disadvantage."

17/02/20

- Tenure of 9 years - non-renewable.
- 2013 - Members decided that earlier period of 6 months for exhaustion of local remedies, to be reduced to two months.
Will come into effect only if 47 states adopt the protocol.
- 2018 - protocol 16.
advisory opinion to the apex Court of a State.

LIFECYCLE OF APPLICATION

1. Admissibility
1.1. exhaustion of local remedies.
1.2. complaint against contracting state -
1.3. applicant has suffered significant disadvantage
1.4. complaint by contracting state.
proceeding
must *
2. Analysis of admissibility
2.1. Single judge → if decides to be inadmissible - dismissed.
2.2. If admitted by SJ → then has to specify if admissible w/ or w/o violaⁿ - decided by three judges committee.
2.3. If no violaⁿ, matter referred to chamber consisting of 7 judges like an (appeal by individual) - not appeal.
4th criteria
violaⁿ decided by chamber

Chamber shall decide admissibility / / /
+ merits.

Final
decision

2.4. If not satisfied w/ Chamber, appeal to
Grand Chamber [appeal by aggrieved
individual against the judgment
passed by Chamber]
2.4.1 consists of 17 judges.

MID SEM SYLLABUS.

- DH v. Czechoslovakia

Art. 14 — discrimination prohibited

Protocol 1 to Convenⁿ — Art. 2 — right to
educatⁿ

Court found racial discrimination

— Conducting Test

equality
v. equity

{ whether test open for all? Yes but
not considerate of circumstances of
Roma & non-Roma pupils }

→ GC — modify the QP — improve
quality & parallel education sys.
amounts to racial discrimination.

(more than 90% students in special
schools are of Roma origin)

exclusive
jurisdiction
to execute

Read Committee of Ministers recommendatⁿ
(resp. for executⁿ of judgment)
[similar to OAS in American system]



case relating to suicide of mentally ill patient. — medical negligence

• Fernandes de Oliveira v. Portugal (2019) Jan
GC

compare —
w/
India

It describes, explains & interprets the +ve obligaⁿ of state. [+ve obligaⁿ to protect right to Article 2(1) — life]

Country Court → compensa focus.

Chamber → ~~no~~ violaⁿ.

GC — didn't discuss compensaⁿ. no violaⁿ.

A.] committed suicide after escaping hospital (psych ward) → hospital aware of medical records & suicidal tendencies.
[medical negligence? violaⁿ of HR?
+ve obligaⁿ?]

→ Apex Court → didn't grant compensaⁿ to applicant (mother)

→ Chamber → violaⁿ of substantive aspect of Art. 2.

Observation → there was a positive obligaⁿ to take preventive measures

→ more safeguards to ensure that the patient did not leave the premises.

→ GC → substantive aspect of Art. 2

focus on medical negligence — check domestic law to identify if the hosp. complied w/ law.

Ref. Mental Health Act - obj. to create an open regime - lack of security fences & walls.

The existing surveillance procedure & available restraint measures had thus provided HSC w/ the necessary tools for AD's treatment.

no negligence

→ There was no causal link b/n any alleged deficiencies in emergency procedures & AD's death.

→ In certain well-defined circumstances, Art. 2 could impose a 'true obligation' on the authorities to take preventive operative measures.