

SOS POLITICAL SCIENCE & PUBLIC ADMINISTRATION

M. A PUBLIC ADMINISTRATION

CONSTITUTIONAL SYSTEM IN INDIA(204)

UNIT- V

TOPIC NAMR-INTERNSTIONSLS COVENANT ON ECONOMIC SOCIAL & CULTURAL RIGHT

Introduction

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)** is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976.[1] It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living. As of January 2020, the Covenant has 170 parties.[3] A further four countries, including the United States, have signed but not ratified the Covenant.

The ICESCR (and its Optional Protocol) is part of the International Bill of Human Rights, along with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), including the latter's first and second Optional Protocols.

The Covenant is monitored by the UN Committee on Economic, Social and Cultural Rights

Meaning of Economic, social, & cultural Rights

Economic, social and cultural rights are socio-economic human rights, such as the right to education, right to housing, right to an adequate standard of living, right to health, victims' rights and the right to science and culture. Economic, social and cultural rights are recognised and protected in international and regional human rights instruments. Member states have a legal obligation to respect, protect and fulfil economic, social and cultural rights and are expected to take "progressive action" towards their fulfilment.

The Universal Declaration on Human Rights recognises a number of economic, social and cultural rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal source of economic, social and cultural rights. The Convention on the Rights of the Child and the Convention on the Elimination of

All Forms of Discrimination Against Women recognises and protects many of the economic, social and cultural rights recognised in the ICESCR in relation to children and women. The Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination on the basis of racial or ethnic origin in relation to a number of economic, social and cultural rights. The Convention on the Rights of Persons with Disabilities also prohibits all discrimination on the basis of the disability including refusal of the reasonable accommodation relating to full enjoyment of economic, social and cultural rights.

ESCR are human rights concerning the basic social and economic conditions needed to live a life of dignity and freedom, relating to **work and workers' rights, social security, health, education, food, water, housing, healthy environment, and culture.**

Human rights provide a common framework of universally-recognised values and norms, and set out state obligations to act in certain ways or to refrain from certain acts. They are an important tool to hold states, and increasingly non-state actors, accountable for violations and also to mobilise collective efforts to develop communities and global frameworks conducive to economic justice, social wellbeing, participation, and equality. Human rights are universal, inalienable, interdependent and indivisible.

Where are ESCR set out-

In 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR), outlining the basic civil, cultural, economic, political and social rights that all human beings should enjoy. In 1966, ESCR were expressed as legal rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (which together with the UDHR and the International Covenant on Civil and Political Rights form the so-called International Bill of Rights), as well as through other key human rights treaties and regional mechanisms. To date, more than 160 states have ratified the ICESCR. In addition, many states have articulated their commitment to ESCR through national constitutions and domestic law.

What are the key principles associated with ESCR-

The ICESCR outlines a number of important principles in the realisation of ESCR, which are often included in other ESCR sources as well. Under the ICESCR, a state must take steps “to the maximum of its available resources” to progressively realise ESCR. In particular, a state (including its subnational levels) has the obligations:

1. to respect ESCR (itself refrain from any violation of ESCR);
2. to protect ESCR (prevent third parties from violating ESCR);
3. to fulfil ESCR (take necessary measures to realise ESCR, including through legislative, administrative, budgetary and other processes); and
4. to seek and provide international assistance and cooperation in the realisation of ESCR.

States must guarantee ESCR without discrimination on the basis of grounds specified in the ICESCR, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, and birth. In its work, the UN Committee on Economic, Social and Cultural Rights (CESCR) has identified additional prohibited grounds for discrimination, including disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation. The elimination of discrimination, and certain minimum core obligations identified by CESCR in some of its **general comments**, are not subject to progressive realisation but are immediate obligations.

The preamble of the UDHR confirms that “every individual and every organ of society” shall strive to promote respect for human rights and to “secure their universal and effective recognition and observance”; this extends to businesses, international and multilateral organisations, and other non-state actors.

Importance of ESCR-

The articulation of ESCR in international law followed long-term demands for these basic rights by people worldwide, and reflects concern for the life of every individual, particularly the most vulnerable, as expressed in many philosophical, religious and other traditions.

In an era of increasing economic globalisation and growing inequality within and between states, there is an urgent need for grassroots groups, NGOs, academics, and other organisations and individuals to unite to recognise connections between continuing, localised struggles and to realise the human rights of all persons in practice. In understanding instances and patterns of poverty and deprivation as violations of ESCR – rather than mere misfortune, events outside human control, or the result of individual shortcomings – an obligation is placed on states and, increasingly, on corporations and other non-state actors, to prevent and address such situations.

Around the world, the ESCR framework is used to bolster actions for justice and against oppression, and amplify progressive alternatives to enhance the enjoyment of ESCR. Activists have brought legal cases before UN treaty bodies, courts and other dispute resolution bodies to demand change, documented and publicised recurring violations, mobilised communities, developed legislation, analysed domestic budgets and international trade agreements to ensure compliance with human rights, and built solidarity and networks between communities locally and across the globe.

ESCR unite women and men, migrants and indigenous people, youth and elders, of all races, religions, political orientations, and economic and social backgrounds, in a common realisation of universal human freedom and dignity.

Background Information on the ICESCR

The International Covenant on Economic, Social and Cultural Rights (ICESCR) together with its sister Covenant, the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration, form the International Bill of Human Rights which is the pillar for human rights protection within the United Nations.

The ICESCR was adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966. The Covenant reflects the commitments adopted after World War II to promote social progress and better standards of life, reaffirming faith in human rights **There's also considered to be an East-West divide, with Eastern countries more inclined to economic, social and cultural rights, and the Western countries more inclined to civil and political rights. An example of this is the fact that China is a party to ICESCR, but not the ICCPR, while the United States is a party to the ICCPR, but not ICESCR.**

But, like the United Nations General Assembly said both types of rights are "interconnected and interdependent". For example, the ICCPR right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is much the same as the ICESCR right not to be hungry.

employing the international machinery to that end.

Since the ICESCR is an international human rights treaty, it creates legally binding international obligations to those States that have agreed to be bound by the standards contained in it. As of November 2006, 155 States are parties to the ICESCR, thus, it can be seen as a treaty that reflects global consensus on the universal human rights standards that apply to the economic, social and cultural field the Rights Envisaged

Articles-

The International Covenant on Economic, Social and Cultural Rights (1966), together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), make up the International Bill of Human Rights. In accordance with the Universal Declaration, the Covenants **◆**recognize that ... the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights. **◆**

Article 1-All peoples have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development.

Article 2-Each State Party undertakes to take steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty. Everyone is entitled to the same rights without discrimination of any kind.

Article 3-The States undertake to ensure the equal right of men and women to the enjoyment of all rights in this treaty.

Article 4-Limitations may be placed on these rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5-No person, group or government has the right to destroy any of these rights.

Article 6-Everyone has the right to work, including the right to gain one's living at work that is freely chosen and accepted.

Article 7-Everyone has the right to just conditions of work; fair wages ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure.

Article 8-Everyone has the right to form and join trade unions, the right to strike.

Article 9-Everyone has the right to social security, including social insurance.

Article 10-Protection and assistance should be accorded to the family. Marriage must be entered into with the free consent of both spouses. Special protection should be provided to mothers. Special measures should be taken on behalf of children, without discrimination. Children and youth should be protected from economic exploitation. Their employment in dangerous or harmful work should be prohibited. There should be age limits below which child labor should be prohibited.

Article 11-Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.

Article 12-Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

Article 13-Everyone has the right to education. Primary education should be compulsory and free to all.

Article 14-Those States where compulsory, free primary education is not available to all should work out a plan to provide such education.

Article 15-Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress.

Source: Based on UN Centre on Human Rights, The International Bill of Rights, Fact Sheet #

states political process

States become parties to an international treaty through ratification or accession. When a country becomes a State party to the ICESCR, it voluntarily accepts a range of legally binding obligations to promote the realisation of economic, social and cultural rights at the national level. Moreover, upon ratification or accession to the ICESCR, a State party is also offering itself to the scrutiny of an international committee of independent experts (the Committee on ESCR) on the basis of these norms and standards.

It is also important to note that when governments become States parties to the ICESCR, they can identify that they will not be bound to particular provisions. This is known as "entering a reservation." Sometimes States parties can also make declarations and these have the same effect as reservations.

The Office of the United Nations High Commissioner for Human Rights has posted the full text of the ICESCR, including all of the reservations from different States on their website. The list of countries that have signed the ICESCR is also included. This site can be accessed [here](#).

The Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights is the supervisory body of the International Covenant on Economic, Social and Cultural Rights. It was established under United Nations Economic and Social Council (ECOSOC) Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the ECOSOC in Part IV of the ICESCR.

The ECOSOC is the primary body dealing with the economic, social, humanitarian and cultural work of the United Nations system. ECOSOC oversees five regional economic commissions and six "subject-matter" commissions, along with a sizeable system of committees and expert bodies. ECOSOC is composed of 54 member States, elected by the United Nations General Assembly for three-year terms.

The Committee on Economic, Social and Cultural Rights is composed of eighteen independent experts. Members of the Committee are elected by ECOSOC by secret ballot from a list of persons who qualify as "experts in the field of human rights" and who have been nominated for that purpose by the States parties. Members are elected for four years and are eligible for re-election (Res. 1985/17 of 28 May 1985). The current list of members of the Committee is available [here](#).

The Committee meets in Geneva and normally holds two sessions per year, consisting of a

three-week plenary and a one-week pre-sessional working group. The Committee also publishes its interpretation of the provisions of the Covenant, known as general comments.

Overview of the Reporting Process

All United Nations human rights treaties include a system of periodic reporting. States parties to these treaties are obliged to report periodically to a supervisory body on the implementation at the domestic level of the treaty in question. In accordance with Article 16 of the ICESCR, States parties are obliged to submit periodic reports to the Committee on Economic, Social and Cultural Rights within two years of the entry into force of the Covenant and from then on every five years. The reports should reflect the extent to which the rights are being realised in the country concerned, including the "factors and difficulties affecting the degree of fulfilment of the obligations under the Covenant." In general, the reporting mechanism consists of the following stages:

The submission of the State's Report: Each State party to the ICESCR must prepare their national report following the corresponding reporting guidelines and submit it for examination in a given timeframe. In addition to the State report, the treaty bodies receive information provided in particular by NGOs and agencies of the United Nations. **The pre-sessional working group and the "list of issues":** Prior to each Committee session, a few members of the Committee meet in order to identify in advance the questions which will constitute the principal focus of discussion with State representatives during the constructive dialogue (the discussion between government representatives and Committee members).

This "pre-sessional working group" prepares a list of issues to be taken into consideration when examining the State party report, which is transmitted to the permanent delegation of the State concerned. The idea is to provide the State with the opportunity to prepare answers in advance and thereby to facilitate dialogue with the Committee. States should provide written replies to the list of issues well in advance of the session, in order to make these available to the Committee members in the respective working languages.

The Constructive Dialogue: As mentioned, the discussion between government representatives and Committee members is called the 'constructive dialogue'. States are encouraged to be present at the meeting when their reports are examined.

The Concluding Observations: The final phase of the examination of State reports is the drafting and adoption of the Committee's "Concluding Observations". In general terms, in the Concluding Observations, the Committee gives an introduction to this document, recognizes some factors and difficulties that affect the implementation of the Covenant, highlights some positive aspects related to ESCR within the State and finally sets down some aspects of concern as well as recommendations. All the concluding observations made by the Committee on ESCR are available here.

Difference Between Economic, Social and Cultural Rights, and Civil and Political Rights

Civil and political rights get more attention than economic, social and cultural rights. ICESCR rights are sometimes thought to be “second-class rights” because they’re unenforceable, can’t be reviewed in court and can only be fulfilled “progressively” over time, taking account of **available resources**.

It’s also thought that ICESCR rights require **high levels** of financial and human investment, while civil and political rights just need states not to interfere. But civil and political rights need a functioning court system for their enforcement, which means investment. Likewise, economic, social and cultural rights, like trade union freedoms, just need the state not to meddle.

There’s also considered to be an **East-West divide**, with Eastern countries more inclined to economic, social and cultural rights, and the Western countries more inclined to civil and political rights. An example of this is the fact that China is a party to ICESCR, but not the ICCPR, while the United States is a party to the ICCPR, but not ICESCR.

But, like the United Nations General Assembly **said** both types of rights are “interconnected and interdependent”. For example, the ICCPR right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is much the same as the ICESCR right not to be hungry.

General Comments by the Committee

General Comments are authoritative statements by the Committee on Economic, Social and Cultural Rights on the meaning of the provisions in the ICESCR. General Comments aim to clarify the understanding of substantive areas of the Covenant and on the obligations of the State. At a more practical level, General Comments also point to information that should be included in State Party reports.

List of general comments adopted by the Committee on Economic, Social and Cultural Rights

- No. 1 (1989): on reporting by States parties;
- No. 2 (1990): on international technical assistance measures (art. 22 of the Covenant);
- No. 3 (1990): on the nature of States parties' obligations (art. 2, para. 1, of the Covenant);
- No. 4 (1991): on the right to adequate housing (art. 11, para. 1, of the Covenant);
- No. 5 (1994): on persons with disabilities;
- No. 6 (1995): on the economic, social and cultural rights of older persons;
- No. 7 (1997): on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions;
- No. 8 (1997): on the relationship between economic sanctions and respect for economic, social and cultural rights;
- No. 9 (1998): on domestic application of the Covenant;
- No. 10 (1998): on the role of national human rights institutions in the protection of economic, social and cultural rights;
- No. 11 (1999): on plans of action for primary education (art. 14 of the Covenant);
- No. 12 (1999): on the right to adequate food (art. 11 of the Covenant);
- No. 13 (1999): on the right to education (art. 13 of the Covenant);
- No. 14 (2000): on the right to the highest attainable standard of health (art. 12 of the Covenant);
- No. 15 (2002): on the right to water (arts. 11 and 12 of the Covenant);
- No. 16 (2005): on the right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the Covenant)
- No. 17 (2005): on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15 (1) (c) of the Covenant)
- No. 18 (2005) on the right to work (art. 6 of the Covenant).
- No. 19 (2008): on the right to social security
- No. 20 (2009): non-Discrimination in Economic, Social and Cultural Rights (art.2, para 2)