

**EIGHTH SEMESTER  
PAPER I  
HUMAN RIGHTS LAW AND PRACTICE**

**TOPIC II THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**

**TOPIC III THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966**

**TOPIC III THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966**

## Topic II

### **The International Covenant on Economic, Social and Cultural Rights, 1966**

The General Assembly on 16<sup>th</sup> December, 1966 had adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) which came into force on 3<sup>rd</sup> January, 1976.

The Preamble to the ICESCR, 1966 proclaims that the state parties to the said covenant, 1966 should recognize the inherent dignity and equal and inalienable rights of all members of the human family .these are the foundation of freedom, justice and peace in the world. State Parties should also recognize that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

The feature of the ICESCR, 1966 is that it provides for the state parties to undertake responsibilities individually or collectively through international cooperation and assistance especially economic and technical to maximize of their available resources with the view to full realization of rights as mentioned in the ICESCR, 1966.The provisions of the ICESCR, 1966 are widely regarded as contingent on the economic development and available resources of the states.

Besides the Preamble the ICESCR, 1966 comprises of 31 Article which can be categorized into five parts.

**Part I (Article 1):** Article 1 recognizes right of self determination. It is identical with Article 1 of the International Covenant on Civil and Political Rights, 1966. This part also introduces the right to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources.

**Part II (article 2 to 5):** This part establishes the general principles of progressive realization as well as states that the rights are not absolute subject to reasonable restriction for the purpose of promoting welfare to democratic society.

**Part III (Article 6 to 15):** This part deals with various substantive rights:

Labour welfare (Articles 6 to 8);

Right to social security (Article 9);

Right to family life (Article 10);

Right to adequate standard of living (article 11);

Right to enjoy highest attainable standard of physical and mental health (Article 12);

Right to education (articles 13 & 14);

Right to participate in cultural life, enjoy the benefits of scientific progress and its application.

**Part IV (Articles 16 to 25):** (Implementation Procedure) This part governs the reporting and monitoring system for implementation of the principles as mentioned in the ICESCR, 1966.

**Part V (Article 26 to 31):** This part deals with ratification and amendment provisions.

### **Implementation Procedure:**

Machinery for implementation of the rights as enumerated in the International Covenant on Economic, Social and Cultural Rights, 1966 is much weaker than the International Covenant on Civil and Political Rights, 1966. Implementation of economic, social and cultural rights is local and national issue.

The present Covenant, 1966 simply states about the reporting procedure. Part IV (Article 16 to 25) of the ICESCR, 1966 deals with reporting system.

### **Reporting system has been discussed in the following steps:**

State parties to the ICESCR, 1966 undertake to submit reports on the measures taken, progress made, difficulties faced in achieving the observance of the provisions of the covenant within one year of the entry into force of the covenant, 1966 and from time to time as may be required to the Secretary General of the United Nations, (Article 16 of the ICESCR, 1966).

The Secretary General shall transmit the copies of the reports to the Economic and Social Council for consideration and to the specialized agencies, (Article 16 of the ICESCR, 1966).

The Economic Social Council may transmit the reports submitted by the states to the Commission on Human rights for its consideration and recommendations, (Article 19).

State parties may submit comments to the Economic and social Council on any recommendation under article 19 or reference to such recommendation in any report of the Commission on Human rights or any documents referred to therein (Article 20).

The Economic and Social Council may submit report from time to time to the General Assembly with recommendations and summary of information received from state parties and agencies (article 21).

The Economic and Social Council in 1985 established a Committee on Economic, Social and Cultural rights. The Committee is charged with monitoring the implementation of the provisions, principles of the ICESCR, 1966. This Committee is not autonomous and not responsible to state parties but to the Economic and Social Council.

### **The Optional Protocol to the ICESCR:**

In 1966, the United Nations General Assembly has adopted the International Covenant on Economic, Social and Cultural Rights. The Covenant obliged its parties to recognize and progressively implement economic, social and cultural rights, but did not include any strong mechanism by which these obligations could be legally enforced except reporting procedure.

In this regard The Optional Protocol to the ICESCR, 1966 has been adopted by the United Nations General Assembly on 10th December 2008 which came into force on 5<sup>th</sup> May, 2013. This optional protocol provided different modes of implementation mechanism: Individual Communication system (Article 1 to 9 of the Optional Protocol to the ICESCR), Inter-state Communication System (Article 10 of the Optional Protocol to the ICESCR), Inquiry Procedure (Article 11 of the Optional Protocol to the ICESCR).

### **Individual Communication system (Article 1 to 9 of the Optional Protocol to the ICESCR):**

This procedure can be availed by those state parties who are parties to the both –The ICESCR, 1966 and the Optional Protocol to the ICESCR.

The Optional Protocol to the ICESCR, is an international treaty that allows victims of violation of economic, social and cultural rights to present complaints at the international level. When people cannot access justice in the courts of their country for violations of economic, social and cultural rights, they can bring a complaint to the United Nations Committee on Economic, Social and Cultural Rights (Article 2 of the Optional Protocol to the ICESCR).

The Committee shall not consider the communication unless it has ascertained that all the available domestic remedies have been exhausted (Article 3 of the Optional Protocol to the ICESCR). The Committee may also request the state party to take such interim measures as may be necessary in exceptional emergency situation (article 5 of the Optional Protocol to the ICESCR). After examining the communication the Committee shall transmit its view together with its recommendations to the concerned party (Article 9 of the Optional Protocol to the ICESCR). The state party is required to consider the Committee's recommendation and shall submit within six months a written response including information and action taken to give effect to recommendations (Article 6 of the Optional Protocol to the ICESCR).

### **Inter-state Communication System (Article 10 of the Optional Protocol to the ICESCR):**

A state party may at any time declare that it recognizes the competence of the Human Rights Committee to receive and consider communication to the effect that another state party does not perform its obligation as mentioned under the present Covenant, 1966.

Firstly if one of the state parties considers that another state party fails to give effect to the provisions of the ICESCR, 1966 then it may through written communication draw the attention of the concerned state relating to the specific issue. Within three months of receiving the communication the receiving state party shall communicate the sending state an explanation. If the matter is not adjusted satisfactorily either state party shall have right to refer the matter to the Human Rights Committee by notice given to the Committee and to the other state. The Committee tries to find out solution if it is satisfied that all the available domestic remedies have

been exhausted in confirmation with the principles of international law. For any matter the Committee may call for the concerned state parties to provide for relevant information.

**Inquiry Procedure (Article 11 of the Optional Protocol to the ICESCR):**

If the Committee receives reliable information relating to grave violation of rights by the state party to the present covenant, may conduct inquiry through its members and shall request the concerned state to cooperate in the investigation. This procedure includes visit to territory of the concerned state with its consent. After inquiry the Committee shall transmit the findings along with comments and recommendations to the state party.

In conclusion it can be said the implementation procedure under both the covenants ( The International Covenant on Economic, social and Cultural Rights, 1966 and the International Covenant on Civil and Political Rights,1966) are not very effective. International cooperation and assistance are therefore required to accomplish the social and economic justice from which stability and peace flow.

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