

## Implementation of ICCPR in Sri Lanka: Impediments and Prospects

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**Abstract** - After Second World War the nations were convinced of the necessity to establish firm international organizations to protect human rights. As a result, international human rights conventions came into force. This paper focuses on the international human rights conventions and their implementation in the Sri Lankan legal system. In particular, this article discusses the issues pertaining to implementation of International Covenant on Civil and Political Rights (ICCPR) in the Sri Lankan context. The study is doctrinal in the form of research and is based on relevant Conventions, Additional Protocols, Documents/Agreements prepared by the state and non-state armed groups, National policy papers and Codifications of Customary International Law and International Norms as primary sources and books, articles, institutional working papers, discussion papers and relevant internet sources as secondary sources. The paper discusses ICCPR and its protocol, how Sri Lanka signed and ratified this covenant and its protocol and implementation of these instruments in the ensuing period. Moreover, the article discusses the political interference occasioned internationally and domestically in the process of implementation of the provisions of ICCPR and its Protocol in Sri Lanka. The article concludes that the implementation of International Covenant on Civil and Political Rights is unsatisfactory and identify several impediments in its implementation in the domestic level.

**Key words:** International Conventions, Human Rights, Domestic Law, Sri Lanka

"We will not enjoy security without development, we will not enjoy development without security, and we will not enjoy either without respect for human rights."

- UN Secretary-General Kofi Annan

Human rights are often defined in different ways. All these definitions hold the same consensus that human rights include the recognition and respect of people's dignity. Human Rights are a set of moral and legal guidelines that promote and protect recognition of values, identity and ability to ensure adequate standards of living with fairness. All these human rights are compiled in the Universal Declaration of Human Rights in 1948. After that in 1966 two remarkable International Human Rights Instruments came into force namely International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR). Thereafter a number of human rights treaties, covenants, protocols, conventions came into existence including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture), Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of the Child (CRC).

The main problem sought to be answered in this research is how the ICCPR has been implemented in the domestic legal system of Sri Lanka? The purpose of this article is to discuss the implementation of ICCPR in the Sri Lankan domestic context. The methodology of this article is the black letter approach and is based on doctrinal research. It has employed relevant Conventions, Additional Protocols, Documents/Agreements prepared by the state and non-state armed groups, National policy papers and Codifications of Customary International Law and International Norms as primary sources and books, articles, institutional working papers, discussion papers and relevant internet sources as secondary sources.

The first part of this paper will introduce ICCPR and its protocol and the second part will discuss how Sri Lanka signed and ratified this Covenant and its protocol. The third part will deal with the implementation of the covenant and its protocol in the domestic level in Sri Lanka including the political interference occasioned on such implementation internationally and domestically. Fourth part will discuss the implementation of ICCPR in the domestic context of India at a glance and the final part will lay down conclusions and recommendations.

### Introduction to ICCPR

After the Second World War, human race was wrapped up in the dream of a secured world. It induced the world to make global level protections for human dignity which resulted in one of the giant leaps of mankind; the Universal Declaration of Human Rights (UDHR). UDHR was introduced by the United Nations Organization established in 1945 for the purpose of maintaining peace and security in the world. Since UDHR is a compressed version of all the human rights, people needed a highly explained and elaborated human rights convention. Therefore, international community introduced International covenant on Civil and Political Rights and International Covenant on Economics, Social and Cultural rights in 1966. The first covenant is aimed at protecting all the civil and political rights including right to legal recourses, right to equality, right to life and right to liberty while the latter covenant included all the economic, social and cultural rights such as right of self determination, right to social security including social insurance, right to enjoyment, right to education and right to work.

The International Covenant on Civil and Political Rights (ICCPR) was drafted to cover rights that protect physical integrity, procedural due process rights and non-discrimination rights (civil) and to safeguard the meaningful participation in the political life of one's society. It includes rights such as freedom of expression, assembly, and association, and the right to vote (political)<sup>1</sup>. ICCPR was adopted by the UN General assembly in 1966. It did not come into force until ten years later upon ratification by

<sup>1</sup> Joseph, S., Schultz, J., Castan, M., 2000. *The International Covenant on Civil and Political Rights: Cases, Meterial and Commentary*, Oxford: Oxford University Press, p. 3-4.

thirty-five countries. As of June 2004, there were 150 State Parties to the ICCPR. There are 104 parties to the First Optional Protocol on the right of individual petition to the Human Rights Committee (HRC) and 51 parties to the Second Optional Protocol on the abolition of the death penalty.<sup>2</sup>

International Covenant on Civil and Political Rights (ICCPR) is the primary global treaty for first generation human rights. It contains a complex of enlightenment rights. ICCPR was adopted by the United Nations General Assembly on 16<sup>th</sup> December 1966 and came into force from 23<sup>rd</sup> March 1976. It respects Civil and Political Rights including right to life, right to speech, right to religion, right to due process and fair trial. This covenant had seventy-four signatories and one hundred and sixty-seven parties till May 2013. ICCPR is a part of the International Bill of Rights, along with the International Covenant on Economical, Social and Cultural Rights (ICESCR) and Universal Declaration on Human Rights (UDHR).

### Overview of ICCPR

The International Covenant on Civil and Political Rights is an enlightenment of all civil and political rights included in the Universal Declaration of Human Rights. The ICCPR has a preamble and 53 Articles. These 53 Articles are divided into six parts. Preamble recognizes the equal and inherent right on human dignity. Moreover, it mentions the obligations under Universal Declaration of Human Rights. Part I of the ICCPR discusses right to self-determination<sup>3</sup> and Part II deals with general provisions like respect and safeguard of the rights in the covenant, adoption of necessary measures<sup>4</sup>, equal right to men and women<sup>5</sup>, derogation in time of public emergency<sup>6</sup> and destruction of the rights,

<sup>2</sup> Status of Ratifications of the ICCPR [online] Available at: [www.unhchr.ch/pdf/report.pdf](http://www.unhchr.ch/pdf/report.pdf) [Accessed 24 May 2016]

<sup>3</sup> *International Covenant on Civil and Political Rights* (1966) Article 1

<sup>4</sup> *International Covenant on Civil and Political Rights* (1966) Article 2

<sup>5</sup> *International Covenant on Civil and Political Rights* (1966) Article 3

<sup>6</sup> *International Covenant on Civil and Political Rights* (1966) Article 4

restriction or derogation from human rights that are recognized or exist by a state<sup>7</sup>.

Part III of ICCPR contains all civil and political rights including right to life<sup>8</sup>, the prohibition of torture<sup>9</sup>, prevention of slavery<sup>10</sup>, right to liberty and security<sup>11</sup>, freedom to choose the residence<sup>12</sup>, equality before courts and tribunals<sup>13</sup>, freedom of expression and opinion, <sup>14</sup>right to recognition everywhere as a person before the law and right of peaceful assembly. Part IV of ICCPR deals with the establishment of Human Rights Committee. Human Rights Committee is consisted of eighteen members and it may not include more than one national of the same state. These members are elected for a four years' term and eligible to be re-elected. It further discusses the relationship between United Nations and Human Rights Committee. Accordingly, the Secretary General of the United Nations shall provide necessary staff and facilities for the effective performance of the functions of the committee under ICCPR . This committee shall submit an annual report to General Assembly of United Nations. It further includes a reporting procedure and an inter-state complaint procedure. Part IV ultimately deals with reservations and declarations.

Part V of the Covenant deals with the interpretation under the UN Charter and the specialized agencies definitions and inherit right of all people. Part VI of the final Part of ICCPR covers signification, ratification and accession by countries; entering into force and federal state responsibilities and amendments of ICCPR.

<sup>7</sup> *International Covenant on Civil and Political Rights* (1966) Article 5

<sup>8</sup> *International Covenant on Civil and Political Rights* (1966) Article 6

<sup>9</sup> *International Covenant on Civil and Political Rights* (1966) Article 7

<sup>10</sup> *International Covenant on Civil and Political Rights* (1966) Article 8

<sup>11</sup> *International Covenant on Civil and Political Rights* (1966) Article 9

<sup>12</sup> *International Covenant on Civil and Political Rights* (1966) Article 12

<sup>13</sup> *International Covenant on Civil and Political Rights* (1966) Article 14

<sup>14</sup> *International Covenant on Civil and Political Rights* (1966) Article 19

This article places a special attention on the Human Rights Committee implemented from ICCPR. Human Rights Committee is a body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. All States parties are obliged to submit regular reports to the Committee which must include how the rights recognized in ICCPR are being implemented. Initially states must report one year after acceding to the Covenant. Thereafter the states are obliged to submit the report whenever it is requested by the Committee (usually every four years). The Committee examines each report and then addresses its concerns and recommendations to the State party in the form of "concluding observations"<sup>15</sup>. The Committee meets in Geneva or New York three times a year.

Article 41 of the Covenant empowers the Committee to consider inter-state complaints and under the First Optional Protocol to the Covenant the Committee is competent to examine individual complaints. Optional Protocol I to the ICCPR further recognizes the right of individual petition to the Human Rights Committee. Optional Protocol II deals with the necessary measures to abolish the death penalty within its jurisdiction.

### Sri Lankan Political agenda for ICCPR

The ICCPR was adopted by the member states of the United Nations to protect the rights of the People of each country, patently against dreadful governance. But still some governments, after having ratified the ICCPR and the First and Second Optional Protocols respectively in 1976 and 1991, are continuing to deprive the People of the protections granted by the ICCPR and its Protocols.

Sri Lanka acceded to ICCPR in 1980 and its First Optional Protocol regarding individual complains mechanism in 1997. The latter accession was largely due to an initiative of former Minister of Foreign Affairs, the late Hon. Lakshman Kadiragamar, President's Counsel and Member of Parliament. Mr. J.R Jayawardena who held the position of the

<sup>15</sup> United Nations Human Rights website [online] Available at: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx> [Accessed 24 May 2016]

Executive President in Sri Lanka in the period of accession to ICCPR (1980) did not hold a *bona fide* intention to protect the Civil and Political Rights of the citizens in Sri Lanka rather his intention was to pretend the domestic and international community that he is committed towards the protection of such rights. As a result, he did not take steps to implement the rights contained in ICCPR in the domestic context of Sri Lanka through an enabling statute. It shows that the then President used the ICCPR to win his narrow political desires (to win the election and to collect more credits to his name) but not to practically implement for the benefit of present and future generations in Sri Lanka.

Consequent to the widespread communal violence in 1983 where thousands of Tamil people in the south of Sri Lanka were attacked by Sinhala gangs (known as Black July), sixth amendment to the Constitution of Sri Lanka was introduced. However, that amendment also did not implement ICCPR. The amendment was only focused on public and national security. It constitutes a clear infringement of Sri Lanka's obligations under the ICCPR and violates the government's duty to protect the right of any person to express his or her political views and engage in political debate as recognized in ICCPR.

The 1990 government, under President Ranasinghe Premadasa, published proposed amendments to the fundamental rights chapter of the Constitution. It was appeared to broaden the scope of constitutional protection of fundamental rights. (For example the proposed amendment sought to expand the freedom of information as it is recognized in ICCPR). The proposed amendment however was not put before Parliament and did not become law which shows that 1990 government also failed to implement ICCPR in domestic level in Sri Lanka.

The People's Alliance government, under Prime Minister Chandrika Bandaranaike Kumaratunga, was sworn into office following parliamentary elections on 16 August 1994 and it was expected by many of the citizens that this government will enact significant reforms affecting freedom of expression which included in ICCPR. In its manifesto, the People's Alliance Party laid down that they are firmly convinced that the individual cannot be safeguarded without a viable system of checks and balances operating as a restraint on governmental power.

Moreover they indicated that the checks and balances required for this purpose can be applied with any degree of effectiveness only if there is a healthy and vigorous expression of public opinion. This shows that the People's Alliance government was also indolent to implement the ICCPR. After that there were many governments came into power but none of them took steps to implement ICCPR in the domestic level in Sri Lanka.

In *Joseph Perera v. Attorney-General*<sup>16</sup>, Chief Justice Sharvananda warned "Laws that trench on the area of speech and expression must be narrowly and precisely drawn to deal with precise ends. Overbreadth in the area has a peculiar evil, the evil of creating chilling effects which deter the exercise of that freedom. The threat of sanctions may deter its exercise almost as patently as the application of sanctions. The State may regulate in that area only with narrow specificity." This shows that the judiciary in Sri Lanka was particularly favourable towards the use of ICCPR.

In this time period *Nallarathnam Singarasa v. Attorney General*<sup>17</sup> case came into existence. The Petitioner was indicted in High court in Sri Lanka under the Emergency Regulations and the Prevention of Terrorism (Temporary Provisions) Act No. 48, of 1979 as amended. Petitioner was not satisfied with the High Court Judgement and appealed to Court of Appeal and Supreme Court of Sri Lanka respectively. Dissatisfied with both decisions he then went to Human Rights Committee in Geneva which was established under the ICCPR and obtained a decision against the decision given by the Supreme Court of Sri Lanka.

Then for the purpose of implementing the Human Rights committee decision, Singarasa filed a case in the Supreme Court of Sri Lanka. In order to deliver the judgement, Sri Lankan Supreme Court had to decide implementation of international law in the domestic context of Sri Lanka. After analyzing Articles of the Constitution in Sri Lanka specially article 33 which deals with the presidents' powers, the Court emphasized that without an enabling statute, court cannot implement any law including international law. According to the Supreme Court Decision even though Sri Lanka had acceded the

<sup>16</sup> *Joseph Perera v. Attorney-General*, S.C. Nos. 107-109/86

<sup>17</sup> (2006) S.C. SpL(LA) No. 182/99

International Convention/treaty (ICCPR), the court cannot use the treaty provisions in the absence of an enabling statute and as a result of the Judgement the petitioner could not implement the Human Rights Committee decision in Sri Lanka. This decision shows that even in a case of blatant attack on the widely accepted human rights Sri Lankan judiciary is not in a position to implement the provisions of ICCPR.

In 2005, Sri Lanka in order to gain GSP Plus benefits stated that it had ratified and effectively implemented all 16 Human and Labour Rights Conventions including the International Covenant on Civil and Political Rights (ICCPR), Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child (CRC). The annual report of Sri Lanka regarding the GSP Plus benefits stated that the government gave an undertaking to maintain the enforcement of the conventions. As a response to this, in 2007, the ICCPR Act was brought in which guaranteed the promotion and protection of human rights. However according to the Act some of the non-derogable rights might be restricted by law for specific purposes. These purposes include national security, racial and religious harmony and the national economy. For the 2008 application for renewal of GSP Plus treatment, the government had to maintain that progress in complying with the conventions in issue.

#### **ICCPR Act in Sri Lanka**

Therefore, in 2007 to take GSP Plus scheme facilities to Sri Lanka, Sri Lankan government had to pass a legislation to implement the ICCPR. Therefore International Covenant on Civil and Political Rights (ICCPR) Act No.56 of 2007 was introduced in Sri Lanka. It has only 11 sections and its preamble states that the purpose of the Act is to implement International Covenant on Civil and Political Rights (ICCPR) as it has become necessary for the Government of Sri Lanka to enact appropriate legislation to give effect to the Civil and Political Rights referred to in the aforesaid Covenant, for which no adequate legislative recognition has yet been granted.

Section 1 of the Act contains the Short title of the Act and according to Section 2 every person shall

have the right to recognition as a person before the law. Section 3 states that no person should propagate law. Entitlements of an alleged offender is laid down in Section 4 and section 5 deals with the rights of child. Right of access to benefits is included in Section 6. According to Section 7 of the ICCPR Act, the High Court has powers to exercise jurisdiction over the enforcement of the human rights. Appellate jurisdiction has recognized under the Section 8 of the Act which confers appellate jurisdiction upon the Supreme Court of Sri Lanka. Section 9 states that Minister may make regulations for the purpose of giving effect to the principle and provisions of the Act. Section 10 deals with the interpretation and Section 11 states that the Sinhala text shall prevail in the case of inconsistency.

#### **Other jurisdictions**

As far as the other jurisdictions are considered 167, countries have become parties to the International covenant on Civil and political Rights. 67 states has signed, ratified, acceded and succeeded in the domestic level. Another 5 states have signed, but not yet ratified the International Covenant on Civil and Political rights.

India acceded to the International Covenant on Civil and Political Rights on 10 July 1979 with a reservation regarding the application of Article 19 (3) of the ICCPR. Thus India is fully committed to uphold all the rights entrenched in the ICCPR except the rights laid down in Article 19. India as a multi-cultural, multi-religious country has commonly utilized ICCPR to protect the religious and cultural rights of the people and to uphold equality.

However, India has not addressed or upheld all the rights contained in ICCPR. A careful examination into the India's human rights history shows that the safeguards to the human rights contained in the constitution of India, criminal law and court orders are not satisfactorily implemented in the actual practice. The state protections conferred upon the human rights violators, particularly during armed conflicts and the legislations (for instance The Armed Forces (Special Powers) Act, 1958) that vests the armed forces with broader powers to arrest and shoot to kill hinders the compliance and upholding of the rights contains in ICCPR.

Furthermore, India has not yet ratified the First Optional Protocol of ICCPR and not signed the Second Optional Protocol of ICCPR which reveals that India is lagging behind the other countries in the world with regard to the human rights protection developments.

In Australia the covenant is not enforceable. However the Australian Human Rights Commission is observing to enact the ICCPR in the domestic context. Ireland has special criminal courts which stand in the violation of the ICCPR. For an example *Joseph Kavanagh v. Ireland*,<sup>18</sup> Case is coming into this field. New Zealand also not incorporated the ICCPR into the domestic law. However, the Bill of Rights Act of 1990 in New Zealand gives effect to the rights and provisions in the ICCPR. United State Senate ratified the ICCPR in 1992 with five reservations.

ICCPR has been ratified by most of the South Asian countries. Pakistan ratified ICCPR recently and Bhutan still has not ratified the ICCPR. All the South Asian Countries are dualist countries and still some South Asian countries have not implemented the ICCPR in the domestic level with an enabling statute. Only Nepal has ratified the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty.

### Conclusion

Human Rights history of Sri Lanka reveals that the governments in power have attempted to stay without implementing the ICCPR from 1980 to 2007 based on the falsified reasoning that the rights recognized in ICCPR has already been included in the Fundamental Rights chapter of the Second Republican Constitution of Sri Lanka in 1978. However, in reality ICCPR was not implemented in the domestic context of Sri Lanka and the inability of the judiciary to rely on the provisions of the ICCPR in the absence of an enabling statute was laid down in clear terms in the Supreme Court Decision of *Nallarithnam Singarasa v. Attorney General*. Sri Lanka was however forced by the global community to implement the ICCPR through the use of GSP Plus scheme as a weaponry.

<sup>18</sup>United Nations Human Rights Committee Communication No. 819/1998, (2001) U.N. Doc. CCPR/C/71/D/819/1998

Therefore, finally it can be concluded that the implementation of International Covenant on civil and Political rights is very low in the global level, South Asian regional level and even in Sri Lankan domestic level. But this is not a good view as now whole global world is reaching to a right base approach and if states did not implement basic laws in the domestic level, then individual rights or collective rights will never be protected.

### Acknowledgement

South Asian University Librarian, Law Commission Librarian, Colombo University Librarian, General Sir John Kotelawala Defence University Librarian are acknowledged for the kind support.

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