



PROTECTION OF FREEDOM OF SPEECH UNDER INTERNATIONAL LAW

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Abstract: This paper focuses on freedom of speech as a human right and its protection under the International law. The freedom of speech and expression, which is a fundamental human right and every human being, must be given the freedom of speech. It should be mentioned that organizations and governments all over the world acknowledge and protected the freedom of expression it forms the cornerstone of a democratic society. This freedom has been viewed as to including the right to receive and disseminate information. The Human Rights Committee, established in accordance with Article 28 of the International Covenant on Civil and Political Rights, has made significant contributions. The European Convention's system has likewise achieved a significant milestone in this area. Additionally, international lawmaking has been affected by American jurisprudence.

Key Words: Human rights, natural law, unalienable rights, jus gentium, renaissance, international organisations, conventions.

1. INTRODUCTION

In the course of human history, attempts have been made to uphold human dignity. Human rights have roots in many different cultural and religious traditions. Then, it was created by philosophers and supported by politicians and solicitors. Written standards governing the protection of individual rights were gradually incorporated into national legislation. Almost every culture and civilisation, as well as every major religion and intellectual tradition, upholds the dignity and equality of all members of the human species. The value of human life and dignity has been ignored throughout history and is still being ignored now. Nevertheless, the notion of laws that apply to all citizens has a long history. 'Natural law' is what some people refer to it as. It suggests the idea of a set of laws that should govern society. International human standards were established after the First World War. However, a full worldwide system of human rights promotion and protection wasn't put in place until the second half of the 20th century. The United Nations, its specialised agencies, and regional intergovernmental organisations played a major role in making this happen. There are currently more than eighty Universal and Regional Conventions that are enforceable against State Parties under international law. Even while they are not legally obligatory, a significant number of human rights

declarations and recommendations made by international organisations do establish general standards of conduct that States must adhere to.¹

2. MEANING OF HUMAN RIGHTS

There are some rights that are bestowed upon all people at birth. These unalienable moral rights are granted to everyone simply for being human. These demands are made explicit and formalized in what are now known as human rights, in accordance with the procedures by which societies pass laws, both at the national and international levels. These legal rights are backed by both the consent of the government and the right's subject. Human rights are morally concerned with treating people fairly, which is based on ethical notions of justice as well as human empathy or compassion. Human rights can be understood as a fundamental ethical requirement, much like other ethical statements that call for acceptance, according to philosopher and economist Amartya Sen. When addressing issues pertaining to human rights, there is an implicit assumption that the moral claims made would be transparent and in-depth examined.²

3. HISTORICAL DEVELOPMENT OF HUMAN RIGHTS

The inception of human rights can be traced around 539 BC, the year Cyrus the Great's army conquered Babylon. Cyrus advocated for racial equality, freed the slaves, and declared that everyone was free to follow whatever religion they chose. These and other ideas were written on a baked clay cylinder known as the Cyrus Cylinder. The stoic philosophies, which held that human activity should be judged in line with and in conformity with the laws of nature, are also where it may be traced back to in ancient Greece and Rome. Stoicism had a big impact on how it developed and spread. Roman law also recognized the Jus Gentium (Law of Nations), which is frequently referred to as a set of universal rights that went beyond citizenship rights. Natural law is the rule of law that mankind are granted by nature, according to the Roman jurist Ulpian. However, until the middle centuries, natural law and natural rights were not related. In the Greco-Roman and medieval eras, natural law systems emphasized obligations over rights. Additionally, the rules of the time did not recognize concepts of human rights like freedom and equality as they are understood today. Fundamental cultural shifts resulted with the collapse of European feudalism in the 13th century, and it was at this time that the notion of human rights as natural rights first appeared. Throughout the Renaissance and up to the Westphalian peace (1648), this notion remained. The apparent failure of rulers to uphold natural law obligations during this time, opposition to religious intolerance and political and economic enslavement, and the unprecedented commitment to individual expression and global experience that was a feature of the Renaissance period all helped to shift the conception of natural law from duties to rights. The Magna Carta's adoption in 1215, which established the notion of the "Rule of Law" and the fundamental principle of specified rights and liberties for all people, was another significant development in the history of human rights. Another milestone at this time that aided in the establishment of human rights

¹ Leah Lenin, *Human Rights* 1 (National Book Trust, New Delhi, 1998).

² Amartya Sen, "Elements of a Theory of Human Rights" *Philosophy and Public Affairs*, Vol. 32, 2004.

- The English Bill of Rights (1689).
- The National Assembly of France adopted the Declaration of Human and Citizen Rights in 1789.
- The US Bill of Rights or US Declaration of Independence, 1776.

During this historical period, the concept focused on political and civil issues was originally formed. These rights are sometimes known as first-generation rights. After the First World War, steps were done in the 20th century to create universal standards for human rights. Domestically, there were significant violations of human rights committed during the Second World War, which also disrupted world peace. The atrocities committed throughout this battle strengthened and validated the idea that respecting everyone's intrinsic worth and unalienable rights is the cornerstone of freedom, justice, and peace in the world. However, it wasn't until the latter half of the 20th century that a comprehensive international framework for the advancement and defense of human rights was established. The totalitarian governments established in their nations throughout the 1920s and 1930s grossly violated human rights. The Second World War had a significant positive impact on human life and dignity. As a result, it became clear that international rules were necessary to define and protect human rights because doing so was necessary for preserving world peace. In December 1948, the Universal Declaration of Human Rights (UDHR) was ratified. It was a crucial step toward the International Bill of Human Rights' creation, which defined a standard of achievement for all people and nations. The UDHR has become the pivot point for international human rights. A critical turning point in this process was reached on December 16, 1966, with the adoption of the International Covenant on Civil and Political Rights (ICCPR) and the two main International Covenants on Economic, Social, and Cultural Rights (ICESCR). The existing body of international law governing human rights is composed of more than 80 Universal and Regional Conventions, as well as a much larger number of Declarations and recommendations on human rights made by international bodies.³

4. HUMAN RIGHTS AND FREE SPEECH

A fundamental right with both a societal and a personal component is the freedom of expression. These are regarded as being prerequisites for a person's whole growth, necessary for any society, and the cornerstone of any free and democratic society. It is impossible to exercise other rights without free speech. For instance, the right to vote cannot be effectively exercised without the freedom of expression, association, and assembly. Free speech is not an unqualified right, though, and it can be restricted when required and in a reasonable way. Defamation and hate speech laws can be justified as defending the reputation and rights of others according to those criteria, so long as they are not overbroad. However, restrictions on door-to-door canvassing during elections or actions like preventing access to media sources are likely to infringe one's right to freedom. Finally, the protection of other human rights depends on freedom of expression. Freedom of expression enhances transparency and accountability for violations of human rights, making it a necessary prerequisite for ensuring that rights are properly protected. The United Nations Charter speaks about essential freedoms to all people, and it first mentions the right to freedom of opinion and expression in

³ Available at ohchr.org/en/instruments-mechanism.

Article 19 of the Universal Declaration of Human Rights. All pertinent human rights treaties have included provisions that guarantee this right to freedom of speech and expression.⁴

5. RIGHT OF FREEDOM OF SPEECH AND EXPRESSION UNDER VARIOUS INTERNATIONAL CONVENTIONS AND DECLARATIONS.

(i) The UN Charter, 1945

After the Second World War, which was caused by the failure of the League of Nations, the world's nations felt obligated to work to create an international organization in order to settle international problems amicably and establish peace and security. As a result, on January 26, 1945, when the United Nations Charter was approved, it affirmed the will of member nations to reaffirm trust in the fundamental human rights, in the dignity and value of each individual, and in the equal rights of men and women.⁵

One of the stated goals of the United Nations is to seek worldwide cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion," according to Article I of the organization's charter.⁶

(ii) Universal Declaration of Human Rights (UDHR), 1948

The United Nations General Assembly proclaimed the Universal Declaration of Human Rights (UDHR) in 1948, expressing the commitment of all nations to advance and uphold a comprehensive set of essential human rights. Following are the conditions under which Article 19 of the UDHR guaranteed freedom of thought and speech. Everybody has the liberty of thought as well as expression, including the freedom to do so without restrictions and to promote ideas by using any media or means, regardless of limitations.⁷

This privilege is subject to limitations under Article 29.

It states that "everyone shall be subject only to such limitations in the exercise of his rights and freedoms as are determined by law solely for the purpose of ensuring proper acknowledgment and respect for other people's liberties and rights as well as upholding democratic society's legitimate standards for morality, public order, and the general benefit. Under no circumstances may these freedoms and rights be practiced in a manner that is inconsistent with the goals and values of the United Nations."⁸

(iii) International Covenant on Civil and Political Rights (ICCPR), 1966

On December 16, 1966, the United Nations General Assembly adopted two covenants: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), as well as an optional protocol to the ICCPR that permits complaints by individuals regarding violations of their rights enshrined in the covenant. While approving these documents, the worldwide community also decided on the means by which each of the rights outlined in the Universal Declaration of Human Rights would be put into effect. The covenants are legally binding agreements for the

⁴ Emily Howie, "Protecting the human right to freedom of expression in international law", International Journal of Speech-language Pathology 12-15 (2018).

⁵ Lynn Hunt, *Inventing Human Rights* 59 (Northern and company Press, New York, 1st edn., 2007).

⁶ The United Nations Charter, 1945, art. 1

⁷ The Universal Declaration of Human Rights, (preamble. para. 6).

⁸ The Universal Declaration of Human Rights, 1948, art.. 29(2)

States that have signed them, unlike the Universal Declaration.⁹ The right to free speech is mentioned in Article 19 of the ICCPR.

- 1) It states that everyone has the freedom to hold opinions without restraint.
- 2) Everyone has the right to freedom of speech, which includes the ability to gather, convey, and receive information and ideas of all types across all boundaries, whether vocally, in writing, orally or visually, or by any other medium of his choosing.
- 3) The use of the rights outlined in this article's third paragraph entails unique obligations and liabilities. As a result, it might be subject to some limitations, but only those necessary and permitted by law. These restrictions are:
 - a) Respecting the reputation or rights of others;
 - b) In order to safeguard public health, morals, public order, or national security.¹⁰

The covenant forbids "any advocacy of national, social, or religious hatred that incites discrimination, hostility, or violence" as well as "any propaganda for war." Therefore, there is no absolute right to freedom of expression, but generally, any limitations must adhere to the standards of authority, lawfulness, the principle of proportionality and democracy need.¹¹

(iv) International Covenant on Economic, Social and Cultural Rights, 1966

On December 16, 1966, the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were both adopted. The covenant recognizes a number of rights, including the right to employment and equal pay for equal effort; the right to create and join unions; social security; a standard of living that includes enough housing, clothing, and food; protection of the family; and the right to work. The right to freedom of expression is acknowledged by the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in accordance with Article 15(13). The States Parties to the present Covenant commit to upholding the freedom required for creative and intellectual endeavor.¹² The ICESCR has been signed and ratified by 163 state parties.

Additionally, the ICESCR contains an optional protocol that creates a complaint process so that the Committee on Economic, Social, and Cultural Rights can accept and take into account specific complaints.¹³

(v) International Convention on the Elimination of All Forms of Racial Discrimination, 1979

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) defines the right to freedom of speech as the freedom of thought, conscience, and religion under Articles 5(d) (vii) and (viii), respectively.

The document reads as follows: In accordance with the fundamental obligations set forth in Article 2 of this convention, states parties undertake to prohibit and eliminate social discrimination in all of its manifestations and to guarantee everyone's right to equality before the law, without regard to their race, colour, or national or ethnic origin, particularly in the enjoyment of the following rights.

⁹ *Supra* note 1 at 11.

¹⁰ International Covenant on Civil and Political Right, 1966, art. 19.

¹¹ The Universal Declaration of Human Rights, 1948 art .29.

¹² International Covenant on Economic, Social and Cultural Rights, 1966 ,art .15

¹³ The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 1966.

- a) The right to freedom of mind, conscience, and religion.
- b) Other civil rights.
- c) The freedom of speech and association.¹⁴

The ICERD has been satisfied by the 177 States

(vi) Convention on the Rights of the Child, 1989

A legally binding international instrument for the promotion and protection of human rights is the Convention on the Rights of the Child. The goal of the agreement, which was adopted in 1989, is to safeguard the rights of all children worldwide. Articles 12 and 13 of the Convention on the Rights of the Child (CRC) guarantee freedom of expression.¹⁵

In accordance with the child's age and pregnancy, the views of the child are given fair consideration in all decisions that concern the child, and States Parties are required to provide the child who is competent to form his or her own opinions the freedom to voice those views. For this reason, the child must be given the chance to participate in any judicial or administrative procedures that impact them, either directly or through a representative or other competent entity, in a way that complies with the procedural laws of their country.

Article 12 states that:

1. The right to freedom of expression for children includes the ability to gather, share, and receive knowledge and ideas of all types without regard to geographical boundaries, whether verbally, via the production of art, written or printed work, or any other form of expression the kid chooses.
2. This freedom is exercised subject to particular limitations, but these limitations must only be those required by law:
 - (a) For safeguarding of national security, public order, public health, or morality, or
 - (b) For the preservation of rights or reputations of others.¹⁶

Article 13 states that:

- 1) The freedom to absorb and disseminate knowledge and ideas of any type, without restrictions, whether verbally, in writing or print, via works of art, or via any other media of the child's choosing, is part of the right to freedom of speech.
- 2) The exercise of this right may be subject to certain limitations, but these limitations must only be those required by law:

For guarding of other people's rights or reputations, or for the protection of public morality, public health, safety of the nation, or other factors

¹⁴ International Convention on the Elimination of All Forms of Racial Discrimination, 1979, art . 5.

¹⁵ Convention on the Rights of the Child, 1989.

¹⁶ Convention on the Rights of the Child, 1989, art. 12.

(vii) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family, 1990

The Agreement establishes basic standards for migrant workers and members of their families in an effort to end worker exploitation during the migration process. The International Convention for the Protection of All Migrant Workers and Members of Their Families (ICMW) protects the freedom of expression in Article 13: "Migrant workers and members of their families shall have the right to hold opinions without hindrance."

1. The right to freedom of expression belongs to migrant workers and the members of their families. This right includes the freedom to gather and disseminate information and ideas of any kind, regardless of borders, whether orally, in writing, in print, through art, or through any other form of media of their choosing.

2. The use of the right set forth in paragraph two of this article is subject to specific obligations and responsibilities. Therefore, it may be subject to particular rules, but these rules may only be those that are mandated by law.;

- a) Respect for others' rights or reputations;
- b) Protection of the national security of the concerned states;
- c) Preservation of public order; protection of public health or morals;
- d) presentation of any war propaganda;
- e) Presentation of any advocacy of national, social, or religious hatred that constitutes incitement to discrimination, locality, or violence.¹⁷

The ICMW has been satisfied only by 47 States.

6. PROTECTION OF FREEDOM OF SPEECH AND EXPRESSION IN REGIONAL TREATIES

Conventions that apply to all states in a certain region are known as regional conventions. They support the contextualization and localization of global norms and standards. They are frequently discussed through regional intergovernmental bodies like the African Union or the European Union. The following regional accords guarantee the freedom of speech and expression.

(i) European Convention on Human Rights(ECHR), 1950

As a result, the ECHR is a special piece of legislation. It is regarded as one of Europe's most significant post-secondary civilizational accomplishments. It is based on the 1948 Universal Declaration of Human Rights, which was created by the UN. However, the ECHR goes a step farther in protecting human rights because it was established as a treaty with legal force rather than only a proclamation. English and French, the Council of Europe's official languages, were utilized to draft the ECHR. It begins with a preamble and is broken into three sections, each of which has multiple articles: There is a list of human rights and freedoms in the first part. The founding and operations of the European Court of Human Rights (ECHR) are discussed in the second section. There are various provisions in the third part.

¹⁷ International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990, art. 13.

According to Article 10 of the Convention, the right to free speech is recognized. This encompasses the freedom to express one's beliefs, as well as the obligations and limitations that may also be placed on that freedom. It also involves the ability to receive and freely distribute ideas and information across boundaries.

It states that

(1) "The right to freedom of expression is a fundamental human right." The capacity to hold thoughts and freely communicate ideas across international boundaries without interference from the government must be included in this freedom. This Article does not prevent States from issuing licenses to companies involved in cinema, television, or broadcasting.

(2) Due to the duties and responsibilities that come with exercising these freedoms, there may be formalities, conditions, restrictions, or penalties that are mandated by law. Laws are needed in a democracy for the protection of the public, the nation's security, or territorial integrity, to prevent crime or disturbance, to safeguard people's health or morality, to uphold others' reputations or legal rights, or to prevent disclosure.

(ii) The American Convention on Human Rights, 1969

The multinational human rights agreement signed by the Organizing American States is known as the American Convention on Human Rights (ACHR). A global human rights agreement is the American Convention on Human Rights, sometimes called the Pact of San José. In San José, Costa Rica, on November 22, 1969, many Western Hemisphere nations ratified it. After Grenada's eleventh ratification instrument was deposited on July 18, 1978, it entered into force. The Convention's preamble states that its goal is "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the fundamental human rights."

The ability to seek, receive, and transmit knowledge of any sort, regardless of boundaries and through any medium, is included in Article 13's definition of the right to freedom of thought and expression. The permitted boundaries of this privilege are described in Subsection 2.

(iii) African Charter on Human and People's Rights, 1981

The African Charter on Human Rights, commonly referred to as the "Banjul Charter," is a global human rights document that strives to defend, uphold, and promote human rights principles throughout the African continent. African Union has since taken its place as the organization's new moniker. In order to create a document for the African continent that would be as common in Europe as the European convention on human rights and the American convention on human rights was, the heads of state from various regions participated in the promotion and formulation committee in the year 1979. This draft document was created in the latter stages of the 18 assembly. This important piece of equipment was approved in Nairobi, a city in Kenya, in June 1981. This charter began operating on the fortunate day of October 21, 1986, according to a provision included in Article 63. It said that in order to ratify the ratification when the organization's members agreed and it had been approved by the secretary general, a simple majority was needed. Following that, it would start to apply after three months. It is also important to note that the African Human Rights Day was established to commemorate the day that the African Charter was accepted for enforcement. Under Article 9, it safeguards the right to freedom of speech and expression.

According to this clause:

1. Everyone has the right to information,
2. Each person has the freedom to freely express and distribute their thoughts within the bounds of the law.¹⁸

(iv) Arab Charter of Human Rights, 2004

The Arab Charter on Human Rights, which was ratified at a summit of the League of Arab States in May 2004, is one of the alleged survivors of the reform tsunami that is believed to have swept the Arab world earlier in this decade. Ten Arab States, including Algeria, Bahrain, Jordan, Libya, Palestine, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen, have ratified the Charter, which entered into force in March 2008. The Charter, which updates a 1994 document, is a component of a larger effort to modernize the Arab League, which also includes the establishment of an interim Arab Parliament and a Peace and Security Council. The fact that the Charter is a regional document that was negotiated by regional states is what gives it its significance. Thus, it may lessen and ultimately put an end to Arab states' ongoing denial of their obligations to uphold, defend, and advance human rights in many different contexts. The UN Charter, the Universal Declaration of Human Rights, and the Cairo Declaration on the Human Rights of Islam are all upheld by the Arab Charter. The right to freedom of expression is guaranteed by Article 32. It says:

- a) Regardless of geographic limits, the current charter ensures the right to information and ideas through any means.
- b) These freedoms and rights must be practiced in accordance with societal norms and are only subject to restrictions necessary to preserve others' reputations, rights, or safety, as well as national security, morals, public order, or health.¹⁹

7. Special Rapporteurs on Freedom of Expression

Special rapporteurs are officials who look into and provide reports on matters pertaining to free speech. An impartial expert chosen by the UN Human Rights Council to study and report on freedom of speech is known as the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Speech (UNSR). It is the responsibility of UNSRs to compile all pertinent information on any violations of the right to free expression that take place anywhere, to solicit and respond to information from governments and non-governmental organizations that are knowledgeable about these violations, and to provide recommendations and suggestions on how to protect that right more effectively both generally and in the specific locations where violations take place. The foundation of democracy, which enables people and groups to enjoy a number of other fundamental rights and freedoms, is freedom of expression. In accordance with international human rights laws and standards, the Human Rights Council established the Special Rapporteur's duty to safeguard and advance freedom of speech both offline and online. The Special Rapporteur's responsibility to advance and defend the right to freedom of expression was created by the United Nations Commission on Human Rights in 1993.

¹⁸ African Charter on Human and People's, 1989, art. 9.

¹⁹ Arab Charter on Human and People's Rights, 2004, art. 9.

In March 2008, the Human Rights Council opted to prolong the mandate for a further three years (resolution 7/36), replacing the Commission on Human Rights. In March 2011 (HRC resolution 16/4), March 2014 (resolution 25/2), March 2017 (resolution 34/18), and once more in March 2020 (resolution 43/4), the mandate was extended for a further three years.²⁰

8. Protection of Freedom of Expression under Customary Law

A source of international law known as customary international law is one that is founded on States' widespread and consistent use of it, along with their conviction that it is required by law (*opinio juris sive necessitatis*). Customary law is binding on all States regardless of whether they specifically engage in that practice or formally acknowledge it; it does not need to be set up in a treaty or other legal document. The United Nations Declaration on Human Rights (UDHR) is often regarded as embodying international law. Free speech is protected under international customary law. Unless they have expressly and repeatedly opposed to it, a state will still be bound by legal custom regardless of whether it has ratified and signed the treaties that safeguard freedom of expression.²¹

9. CONCLUSION

The value of human life and dignity has been ignored throughout history and is still being ignored today. Human rights are the modern name for what was often referred to as "natural law." The concepts of developing and defending human rights have evolved into formal standards. After World War II, the world came to appreciate the importance of human rights and worked together to establish norms for peace, equality, and dignity. The international system affords pretty comprehensive protection to the right to freedom of expression, which is crucial to the effective operation of the overall human rights system. But it is one of the most frequently violated rights. Numerous assaults, mistreatments, problems, and gaps necessitate multifaceted international and regional response. The need for a robust normative framework in the form of international human rights law to promote freedom of expression is crucial.

²⁰ available at <http://www.ohchr.org/en/special-procedure/sr-freedom-of-opinion-and-expression> (last visited on 20th July, 2022)

²¹ Available at <http://www.law.cornell.edu/wex/arstomary-international-law> (last visited on 15th May 2021).