DALIT & HUMAN RIGHTS

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CHAPTER 1

SOCIAL, ECONOMIC AND POLITICAL SITUATION OF DALITS: A REVIEW STUDY

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ABSTRACT:

This paper examines the social, economic, and political situation of Dalits in contemporary society. Dalits, historically marginalized and oppressed communities in India, face multifaceted challenges that encompass issues related to caste-based discrimination, economic disparities, and political representation. Through a comprehensive analysis of existing literature, government policies, and socio-economic indicators, this study aims to shed light on the complex dynamics that shape the lives of Dalits.The social aspect of Dalit life highlights the persistence of caste-based discrimination and untouchability practices, despite legal provisions to the contrary. Economic conditions reveal stark disparities in income, education, and access to resources, perpetuating a cycle of poverty among Dalit communities. Politically, the representation of Dalits remains inadequate, with limited access to decision-making positions and influence in the democratic processes.This paper also discusses the role of affirmative action policies and social movements in addressing the challenges faced by Dalits. It underscores the need for comprehensive reforms in various spheres of society to ensure the social, economic, and political empowerment of Dalits. The findings highlight the importance of ongoing efforts to eliminate discrimination, promote inclusive economic development, and enhance political participation for Dalits to achieve equitable and just societies.

KEYWORDS:

Dalit Empowerment, Economic Disparities, Human Rights, Inequality, Marginalization, Political Representation, Poverty.

1. INTRODUCTION

The Dalit community is a key focus of the study. The country's efforts to create a Naya Nepal, in which the ethnic, religious, linguistic, and cultural diversity of the nation is recognized and reflected, require that this emphasis be seen in the broader context of Nepal. As stated in the introduction, the overarching objectives of the 2006 jana andolan are perfectly congruent with the desires of the Dalits for an improvement in their circumstances and for social justice for the underprivileged. Dalits are aware that they are not the only group to have suffered as a result of the establishment of the Nepalese state. Additionally, approximately 40% of the population of Nepal is considered to be below the poverty level. However, they believe that their disadvantages are exclusive to them, since they face much more challenges than other groups in Nepal and have a higher social position as a result.

The article by Professor Krishna Bhattachan, a well-known expert on Dalits and indigenous peoples, serves as the major source in the collection of materials that discuss the material situation of the Dalit. He gives a thorough description of the Dalit people's economic, social, and political predicament and explores the causes of the Dalits' discrimination and exclusion from society in the context of religion, the state, and society. It is unclear how many Dalits there are; official figures put the number at 13% whereas Dalits place it at over 20%. The discrepancy may be caused by how individuals identify or by how the census is carried out.

For unlike the janajatis, the dalit community is not well defined. It is also challenging to provide them a specific legal standing because of this. Bhattachan draws attention to the social variety that exists among the Dalits, a community that is sometimes misunderstood by outsiders. They are divided into at least 22 castes according to hierarchy. Some castes are spread out over the nation, while others are rather localized. Some Dalit communities, notably those in Madhesh, are disproportionately harmed. And compared to males, women suffer more from being Dalits[1], [2].

Bhattachan describes the many forms of exclusion from homes, temples, hotels, restaurants, food factories, dairy farms, and water supplies, as well as prejudice at work, feasts, festivals, marriage processions, and funerals that Dalits endure on a daily basis. They experience verbal and physical abuse as well as repeated insults. Since some of their disadvantages are a result of the social structure of the Dalits themselves, Dalit women particularly endure enormous difficulties. They are simple prey for domestic abuse and prostitution to work in brothels. The worth of one's life is inferior to that of others. He has so linked oppression, exclusion, vilification, atrocities, and ostracism to many types of prejudice. Undisputed data indicate that Dalits do poorly in areas that affect a community's status and well-being. No Dalit has ever held a high position in the civil service or served in the government, judiciary, or other constitutional organizations or commissions. Similar economic exclusions apply to Dalits, who must work in menial labor or on the cheap and lack access to land even when farming. Changes in technology and mass manufacturing pose a challenge to them even in their conventional jobs. Apart from these particular drawbacks, Dalits are impoverished as a consequence of widespread prejudice against them. Even though Dalits in Nepal experience poverty on a regular basis, they are the most affected. Lack of money is just one aspect of poverty. Poverty is characterized by continual feelings of vulnerability, dread of the future, and financial and physical instability.

It is the absence of characteristics that promote a good life, which is defined in terms of access to the circumstances that support a respectable level of physical existence and allow people and communities to realize their spiritual and cultural potentialopportunities for reflection, artistic creativity, the development of morality and the discussion of morality, as well as contribution to and participation in the political, social, and economic life of the community. This strategy is best exemplified by Amartya Sen's concept of human "capabilities," which he defines as opportunities to achieve worthwhilefunctioning’s or "states of being," that represent various aspects of well-being, such as not only food and housing but also "more complex social achievements such as taking part in the life of the community, being able to appear in public without shame," and so forth. From a different angle, Townsend, a leading authority on poverty studies, comes to somewhat similar conclusions about the defining characteristic of poverty, focused on the viability of the community, as the inability to "achieve at all or sufficiently the conditions of life—that is, the diets, amenities, standards, and services which allow them to [follow] the customary behavior which is expected of them by virtue of their [playing] the roles, participate in the relationships, and follow the customary behavior which is expected of3 Voices of People in Development, an NPC-UNDP-UNICEF study, states that "the poor people, especially the Dalits and minority groups, also find themselves trapped in a vicious cycle of other complicated problems" in the case of Dalits specifically. They include the decline in self-assurance brought on by being humiliated and mistrusted by wealthy families. Due to their ignorance and isolation, the impoverished people seem to be more open to exploitation.

They frantically seek for access to the resources, knowledge, and opportunities that are often routinely withheld or denied them, making their lives even more challenging. Additionally,

they often lack the power to demand or negotiate. Dalits had severe hardships during the insurgency because of these and other vulnerabilities. The aforementioned narrative and other materials in the collection show how untouchability, discrimination, and a variety of rights violations occur in both private and public spheres and how they affect most areas of life and relationships. The deprivation of a single human right, or even a group of rights, cannot be blamed for the disadvantages and sufferings of the Dalits. Since discrimination and oppression are so ubiquitous and often impact various community members in different ways, most human rights are being denied on both an individual and a collective level. The result is not the infringement of any particular rights but rather the marginalization, subjugation, and persecution of a whole communityand the basic denial of their humanity. We must thus plan in a way that ensures both individual and collective justice. Additionally, just defending these rights cannot serve as a remedy. We must consider not just the Dalits' relationship with the state but also their interactions with other groups, as well as their participation in social and private life[3], [4].

Dalits have attempted to better their condition, but their efforts have generally been futile due to the lack of representation in politics, the public service, and the professions. And when Dalits fight for improved rights, their low position and the arrogance with which higher castes treat them, which is partly driven by the desire to serve as a reminder of Dalits' place in society, often result in horrible punishment. The creation of a new constitution for the Nepal of today, however, creates possibilities for their political, social, and economic advancement. Social and regional inclusion as well as the emancipation of the marginalized were two of the main demands of the 2006 Jana Andolan. The leaders of the major political parties created the interim constitution, which acknowledges Dalit exclusion and discrimination and commits the state to a comprehensive program of inclusion and social justice through state restructuring, including reservations and other forms of affirmative action. Not every change suggested for this reason would benefit Dalits as well as other groups. In the Kathmandu Charteramong other placesDalits have made it plain and unequivocal what changes they want to see made to the state's institutions, policies, and constitution[5], [6].

Dalit Rights Charter of Kathmandu 2007

The creation and adoption of a Charter of Dalit Rights was one of the goals of our partnership with Dalit organizations. The Charter was created in a democratic and open way. It was created to express the worries of Dalits from various Dalit groups and regions of the nation. Each conference generated its own charter, which reflected local issues. These charters served as the foundation for the national charter, the Kathmandu Charter of Dalit Rights 2007, which was accepted at the Godavari summit after much discussion and debate. To submit the Charter to him and the government, delegates were called by the then-prime minister, Mr. GP Koirala, to his home in Baluwatar. He declared his unwavering support for the Charter, which now embodies the Dalit people's core aspirations for the constitution-making process. The "feudal, Hindu caste system" is named as the root of the marginalization of the Dalits in the Preamble, which also supports the House of Representatives' appeal to "make the nation free of untouchability" in its Proclamation of June 4, 2006. To satisfy their needs, it asks for the application of current laws as well as the creation of new ones. The following is a summary of the Charter's main clauses.The Constituent Assembly's processes must provide proportional representation and full involvement of all people, according to the Charter. Political parties must make it easier for Dalit members of various parties to collaborate in order to fulfill the Jana Andolan's goals of social inclusion.

Dalit involvement and state reorganization According to the Dalit viewpoint, the most important aspects of restructuring are their representation and participation in accordance

with the proportionality principle, participation, for all categories, and which includes reservations. The Charter expresses concern about federalism, saying that it should not become the source of further marginalization and discrimination against Dalits, and that no state should be able to derogate from the protections provided by the constitution or the national government. There should never be "any concession to any religion or cultural heritage that permits caste discrimination and untouchability toward Dalits in any manner" at any level of government.

2. DISCUSSION

Dalits should be encouraged to participate in politics and in political parties. The number of Dalit candidates that the parties choose should be adequate for them to gain seats. The law that forbids "sectional" political parties should be repealed if they are unwilling to do so. Political codes of behavior should expressly forbid caste prejudice and untouchability. Opportunities for work and the economy According to the Charter, Dalits "have been expelled from their chosen professions and businesses due to a lack of economic and social security." It promotes the eradication of all types of forced labor as well as the advancement of rights related to employment and meeting basic requirements. It is in favor of economic affirmative action, especially in state-owned businesses and institutions of higher learning. It underlines the need of comprehensive land reform. Additionally, Dalits must be included in plans for their development. eliminating caste prejudice, untouchability, and generally upholding human rights[7], [8].

Discrimination must be "unequivocally" prohibited. The Dalit community's basic rights and human rights shouldn't be infringed upon in the sake of societal norms and values, according to the constitution. The right of an individual to marry whoever they choose must be guaranteed, and those who oppose this right must be punished. Actions should be taken to ensure that there is no discrimination in civil society, that educational materials are reviewed for derogatory language or references to any community, that corporations are bound by human rights obligations, that educational facilities are guaranteed, that access to water is available to all regardless of caste, and that corporations are bound by human rights obligations.

Everyone should be able to access justice and be entitled to equitable administrative procedures. Dalits' access to holy places and protection of their cultural rights are both important.

Dalit females

The Charter recognizes the triple burden Dalit women bear as women, Dalits, and members of the Dalit community.

It requests that the state guarantee their right to equal participation in marriage and divorce proceedings as well as complete protection from domestic abuse. Women should have equal access to and authority over the family's financial resources. The government should create policies and start initiatives to promote intercaste unions.

Dalits of Madheshi

Another very downtrodden group of Dalits are the Madhesi Dalits. They have endured the denial of citizenship and the privileges that go along with it for a very long time. Additionally, they experience severe landlessness. The Madhesi Dalits' difficulties "should be resolved and their proportional representation in all spheres of national life should be guaranteed," according to the Charter.

Communications and information

The public and commercial media are advised to broadcast programs on Dalit concerns, as well as ones that highlight their accomplishments and contributions in both public and private life. They "should accept the duty to advance equality and the eradication of all forms of caste and gender discrimination." After the Charter was ratified, UNDP was sought for guidance on how to implement its demands into the constitution. The section that follows, which deals with this matter, partially pulls on the paper Jill Cottrell wrote for it, and it first covers the setting and method of constitution-making before moving on to the actual terms of the constitution.

The environment in which the constitution is being drafted is quite supportive to Dalit demands and aspirations. The dedication to democracy rather than the rights of marginalized populations was the defining characteristic of the 12 points reached by the seven parties. The 2006 Jana Andolan, however, developed a progressive reform program with special attention to the concerns and ambitions of minority, marginalized populations. It was spearheaded by communities that had hitherto been excluded from political and social authority. The eight-point agreement that the seven parties and the CPN signed on June 16, 2006, which stated that they would "make a forward-looking restructuring of the state so as to resolve the class based racial, regional, and gender-based problems through the election of the constituent assembly"4 was the first agreement to reflect this agenda. On November 8, 2006, a slightly more detailed version of this commitment was agreed upon by the high-level leaders of the parties. The Comprehensive Peace Accord extended on this in Article 3.5 by naming certain communities or groupsincluding Dalitsagainst whom discrimination would be eliminated. Due to the widespread poverty, Dalits' socio-economic rights to food, health, education, and private property were also guaranteed by the CPA. Thus, not only a sizable share but also the main political parties seem to have a very wide commitment to the objectives of the Dalits and other marginalized populations.

Additionally favorable is the constitution-making process. The Constituent Assembly is assigned the assignment. More women, janjatis, Dalits, and Madhesis than ever before are represented. They are also more aware of their rights than they were before, and the majority of them are committed to ensuring that their rights are protected by the constitution. Since the CA must reach decisions by agreement, it would be difficult to establish a constitution that did not safeguard the interests of Dalits and other marginalized people if they banded together. Of fact, it cannot be presumed that Dalits would control the Constituent Assembly. The wealthier groups and their representatives are inclined to dislike certain of their requests, especially affirmative action and reserves. Since Dalits comprise only a tiny portion of the CA population, it is difficult for them to come to consensus and articulate it. Dalits and other minorities are only permitted to run for office on the national party tickets that are controlled by the old governing class. According to the IC regulation, they are subject to party discipline and may be expelled from the party and the CA by the party's leader, however it is unclear what exactly the party's authority is. Traditional party dominance may, at the very least, make it difficult for Dalits to have a unified stance or coordinate their actions. However, in reality, party leaders would have no reason to object to such coordination since the Dalit agenda, as stated in the Charter, is completely consistent with all parties' claims of inclusiveness and social justice as well as their commitments to particular initiatives[9], [10].

Members of the CA who are Dalit must actively participate in committee and plenary sessions as well as other CA processes in order to carry out the goals of the Charter. They must be well-versed in the policies and guidelines of the CA and think carefully about how to best apply them to their personal needs. Only through collaborating and advocating with non-

Dalit members will the CA be able to fully understand the Dalit community's situation. these must describe their afflictions and oppression and demonstrate how these constitute breaches of both individual and collective rights under both Nepali law and the international treaties that Nepal has ratified. They should also describe how problems may be eliminated and how to socially, economically, and politically integrate the community into the rest of society and the state. These statements must be entered into the CA's records because, as Jill Cottrell reminds us, they will serve as an important source of history and information for the future, educating people about the struggles of the Dalits and the motivations behind the inclusion of specific Dalit-benefitting provisions in the constitution. These documents will aid in the interpretation and application of the constitution by judges, state authorities, and others. Dalit organizations, thinkers, and activists will be needed by the Dalit CA members; they should do research and provide briefing papers. For instance, while the IC has provisions for affirmative action, they are often just statements of principle and are not legally obligatory. There will probably be criticism if an effort is made to make them legally obligatory and to set a minimum quota. A document written for the CA members on how to respond to criticisms will tremendously strengthen the hands of Dalit members, and research on the experience of affirmative action and reservations would be helpful. The members and their supporters should take advantage of the many opportunities that a participatory process presents to influence the constitution's drafting, lobby for support both inside and outside of Nepal, and base their arguments on both the standards of democracy and human rights as well as the empirical evidence of their disadvantages.

Additionally, they need to forge bonds of solidarity with other marginalized groups and, when differences do exist, work to harmonise them. Such a bond might be crucial to their success. In the majority of nations, the time spent debating and drafting a constitution offers opportunities and incentives to mobilize the populace and educate them on the goals and organizational framework of the state, how they relate to it and can influence it, as well as their political and economic rights and how to exercise and defend them. The importance of the now generally accepted but often only euphemistically announced idea of "people's sovereignty" is explained in this manner, giving them more authority. Constantly stressing the symbolic value of their unalienable right to vote and the responsible use of it is necessary. This is an opportunity to foster or strengthen Dalit unity, which is crucial for a minority that is already scattered and fragmented. It is not meant to undermine internal identity or challenge national identity, but rather to advocate for and advance shared interests free from factionalism.

Constitution

The main political parties, as was previously noted above, have vowed firmly to provide complete rights and social justice to the marginalized populations. A number of the Interim Constitution's Articles and the Preamble indicate this fundamental shift in views, policies, and values. The IC is a significant improvement over the same clauses in the 1990 Constitution. Beneficiary groups, including Dalits, are highlighted when addressing affirmative action). The terminology used to describe the right against untouchability and racial discrimination has grown, albeit not necessarily in scope. Real progress is made in Article 21, which grants "the right to participate in state structures on the basis of the principles of proportionality" to women, Dalits, indigenous groups, Madheshi communities, oppressed groups, poor farmers, and laborers who are "economically, socially, or educationally backward." The Interim Constitution has been amended to allow for Dalit recruitment into the armed services "on the basis of the principles of equality and inclusiveness" A). Specific rights for women and children are included in the IC. The added

phrasing "no person shall be exploited in the name of custom, tradition, and practice, or in any other way" strengthens the right against exploitation. The IC ensures the right to "proper work practices" and to the right to work.

Minority cultural rights are more protected than they were under the previous constitution. These rights are supported by a number of governmental obligations, regulations, and directive principles. As a result, the regime of rights for minorities and underrepresented people represents a significant advancement over earlier constitutions. The seven parties plus the Maoists, who control the Constituent Assembly, created and approved the IC. A sizable part of the populace strongly supports the IC's aforementioned core ideals. The Dalit agenda has already received widespread support. So, it stands to reason that these clauses would be kept, if not enhanced, in the new constitution. According to an argument made afterwards, the main fight for Dalits may not be to include these provisions in the constitution but rather to make them a reality.

However, as papers by Jill Cottrell and the Center for Human Rights and Global Justice demonstrate, it is crucial that the provisions be precisely worded, free from internal inconsistencies or coherence5, and able to be implemented without the need for numerous new laws and regulations or reliance on government initiatives. The 1990 constitution had significant flaws in this area, as evidenced by the materials in the collection, where the commitment to inclusion was limited by clauses intended to uphold the ideology and power of traditional elites and undermined by the legal standing of clauses that promised progressive policies. The 1990 Constitution, as an illustration of the final point, recognized the significance of social justice, public engagement, decentralization, and the unique rights of women and children, respectively. These aims received very little attention, and prospective beneficiaries were unable to enlist the courts' help in enforcing them. According to Ankit Dhakal's statement on the function of courts, judges who supported directive principles were hampered by the fact that these ideas were not upheld by the courts. And as Jill Cottrell points out, even if a clause is included in the bill of rights, it could not be enforced by itself without further support. There may be no way for the general population to guarantee that "more". Some rights must be available or limited in extent in line with the law.

This may result in two outcomes. The first is that the existence of a law determines whether a right is granted or not. The second is that the right may also be subject to legal restrictions. While Article 16 of the 1990 Constitution guarantees everyone the "right to demand and receive information on any matter of public importance," Jill Cottrell draws attention to the fact that the law that operationalized the right was not passed until 2007, and regulations under the Act were being drafted in the middle of 2008. Therefore, it is crucial that provisions to address the needs of Dalits be as enforceable as possible, such as by including them in the bill of rights or explicitly stating them elsewhere, and that their language does not leave their implementation up to the whim of the legislature or the executive. If a provision cannot be put into effect right away due to practical considerations, the constitution should provide a timeframe for doing so and maybe name the institution in charge of carrying it out. Furthermore, a right shouldn't be subject to onerous requirements or processes. These factors are especially significant to Dalits since, even if they may win special representation in future legislatures, it is probable that their power to influence the legislative or executive process would decline after the CA.

The transformation of certain directive concepts and policies into legally enforceable rights and the inclusion of social and economic rights in the bill of rights are both innovations in the IC for Nepal. By using the clauses and case law of the International Covenant on Economic, Social, and Cultural Rights as well as national constitutions, Jill Cottrell explains what the

rights to water, education, and health entail and how they might be put into practice. The state is not always required to provide all of these necessities. It may fulfill its commitments by promoting or supporting private organizations or family-led efforts, not by creating barriers but by making them easier to access. However, the state may need to take a significant role in advancing social and economic rights in a poor, unequal country like Nepal with a weak institutional framework.

Even if it means repeating certain broad rights provided in other articles, Jill Cottrell urges that attention be given to a special article in the constitution dealing just with Dalits. This tactic would emphasize the significance of particular Dalit rights. Additionally, it draws attention to their disadvantages and vulnerabilities from the past and present and emphasizes the unique duties that the state and society have to ensure their rights are upheld. Dalit activists have so far ignored the larger structure of the constitution in favor of focusing on rights, clauses, and institutions that are particularly significant to them. For instance, the Kathmandu Charter states very nothing about the underlying ideals and principles that need to guide the state's operations or organizational design. This seems sense given the extreme difficulties and limitations they have experienced. However, how the constitution is implemented, particularly any sections that favor Dalits, will be greatly influenced by the form, structure, and relationships of the state institutions. In the end, how the state uses its authority and how aggressively or subversively the objectives of the constitution are followed will depend on the state's institutions and structure, as well as the people in charge of those institutions6. The 1990 Constitution's progressive and forward-thinking directives and policies for the state remained dormant as a result of political parties dominated by traditional elites who had little interest in social reform and were, for the most part, unresponsive to the needs of marginalized communities capturing its institutions. Therefore, the Dalits must pay close attention to every component of the constitution and advocate for organizations that will act in their best interests. Understanding the larger scope of the constitution will be helpful if there is horse trading and compromise, and it will be crucial once the process of putting constitutional provisions into practice and employing them starts.

3. CONCLUSION

Dalits' social, economic, and political position continues to be a serious issue that needs quick action and coordinated efforts. Although much has changed since the days of untouchability, caste-based prejudice still exists in many forms across Indian culture. There are clear economic differences between Dalits and non-Dalits, and these differences are made worse by the Dalits' restricted access to resources, work opportunities, and education. Dalits' lack of representation in important decision-making bodies continues to be a source of worry for their political representation. Although affirmative action measures have significantly improved the socioeconomic circumstances of Dalits, ongoing reform and monitoring are required to achieve their complete inclusion into society. As a result, overcoming the social, economic, and political obstacles that Dalits confront calls for a multifaceted strategy that combines thorough anti-discrimination campaigns, fair economic development programs, and improved political representation.

All parties involved in the process of creating a more inclusive and just society must work together to undermine the deeply ingrained systems of caste-based discrimination and give Dalits the means to live honorable and meaningful lives.

This includes governments, civil society organizations, and the general public. We can only expect to create a society where everyone, regardless of caste, has equal rights and opportunities by such consistent efforts.

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CHAPTER 2

CHALLENGE OF IMPLEMENTING EQUITY AND SOCIAL JUSTICE

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ABSTRACT:

The challenge of implementing equity and social justice is a critical issue facing societies worldwide. This paper examines the multifaceted nature of this challenge, encompassing economic disparities, systemic discrimination, and unequal access to opportunities. Through an analysis of various case studies and existing literature, this study explores the complexities involved in promoting equity and social justice.The abstract begins by delving into the origins and consequences of inequality, emphasizing how disparities in income, education, and healthcare perpetuate cycles of disadvantage for marginalized populations. Systemic discrimination and biases further compound these issues, hindering the realization of a truly just and inclusive society. The paper also highlights the role of policy interventions and grassroots movements in addressing these challenges, underscoring the importance of collective efforts to effect lasting change.The reflects on the persistent nature of the challenge of implementing equity and social justice. Despite progress in some areas, deep-rooted inequalities continue to persist, requiring ongoing commitment and action. It acknowledges that achieving true equity and social justice is a complex and ongoing process that demands the involvement of governments, civil society, and individuals alike. Ultimately, it underscores the importance of sustained efforts to create a more equitable and just world for all.

KEYWORDS:

Discrimination, Equality, Fairness, Inclusion, Justice, Marginalization.

1. INTRODUCTION

It seems possible that many, if not all, of the requests made by the Dalits in the Kathmandu Charter will be included in the new constitution. They may not be as specific as they would want to be, eschewing, for instance, a thorough plan for affirmative action and reservations. However, the execution of any agreed-upon conditions would be the true issue. The NYU report makes remarks on Nepal's "poor constitutional record of addressing Dalit rights' and "its terrible record of implementing human rights commitments with regard to Dalits," as have many others. Nepal has a dismal track record of adhering to international human rights accords, according to UN committees that have looked into the matter. The 1990 Constitution's majority of state laws were ignored.

Even though judges are generally sympathetic to the concept of social justice, little progress has been made. Even the state authorities, who have made repeated pledges to the cause of marginalized people in the CPA, the IC, and other agreements since the April 2006 movement, have rarely made any efforts to ameliorate their status. In order to be heard, some of these groups have had to use intense pressure, disturbance of the peace, or even violence—and special agreements have been reached. If the 1990 restriction on political parties based on religion, caste, tribe, or language, or those whose objectives or symbols "that may disturb the country's religious or communal unity or is divisive in character" is upheld, it may restrict the ability of the disadvantaged communities to make political and policy decisions[1], [2].

There are a number of reasons why Dalit protections in the constitution could not be fully put into practice. Many of these explanations have to do with how law operates and what it can and cannot do in the face of social, political, and economic change. Of course, it is true that caste divisions or their importance were integrated into legislation, not only by customary or traditional law but also by state law, the Muluki Ain of the 19th century, if not formed by law. Because the law was created and so in accordance with the goals of the monarchy and the classes affiliated with it, it was successful in imposing in actuality its caste classifications, disqualifications, and finally disempowerment. Additionally, with a lot of coercion. The current Constitution aims to change the way the law operates, to free individuals who were deprived of their rights and possessions, and to establish a new social structure. Since the state's reach and procedures are wider and more intricate, one may anticipate that it would be able to affect the reversal[3], [4].

It is challenging to determine whether and what are barriers to this reversal. The state and its institutions may be effectively reorganized via the use of constitutions. And sometimes they could even have an impact on how these institutions operate. Constitutions, however, are not particularly effective in modifying social systems. The Indian Constitution's experience with each of these issues attests to the veracity of these claims. However, caste and social hierarchies have not been penetrated by Dalits, who have infiltrated governmental organizations and even established themselves as a "vote bank" to be taken seriously. The real challenge, according to Bhattachan, is not a change in the law but rather in the "mindset and attitudes of those who practice untouchability and fight to retain the hierarchies that reinforce the oppression of the Dalits," who have deep-seated roots in society that support untouchability and other forms of social oppression of the Dalits. Then, as this quote from Bhattachan reminds us, there may be opposition from local elites and members of higher castes, and party officials would undoubtedly regard their votes more highly than Dalit ones.

Dalits may not have the social or legal connections, or even the expertise, to take advantage of the constitution's safeguards, deal with attorneys and judges, and fight against the bureaucracy. Their duty will be more difficult if the new constitution, like the IC and 19, supports the structure of the current political parties and the existing property connections. When the governmental machinery is under the hands of people who want change rather than those who support resistance, social transformation via the legal system is made simpler. On the other hand, if there is, and this cannot be ruled out, a sincere desire on the part of the establishment to achieve greater social justice and more equitable relations between different communities, it would be necessary to outline in the new constitution, rather than the IC, more precisely the objectives, scope, methods, and institutions for affirmative action, full and effective participation, basic needs, etc. Dalits themselves must be included in the decision-making process and its execution, as well as in periodic assessments of the criteria, development, and required policy and procedural changes[5], [6].

Dalits would need to organize themselves to take on important implementation-related political and administrative responsibilities. A disproportionate number of the claims in the Kathmandu Charter are made of an ill-defined "state". The Dalit cause would be undermined if the state attempted to alter "attitudes and mindset" without using coercive methods that violate others' rights and liberties. Dalits will bear a large portion of the burden for turning constitutional victories into concrete realities via persuasive and legal means. They might start by organizing their own home and getting rid of internal caste systems and untouchability. Then, they and other groups must communicate with one another, and their leaders must unite to advance Naya Nepali principles. Additionally, political leaders must shift their focus away from "party politics" and "party competition" and take the initiative in

integrating the populace and therefore bringing the country as a whole together, which I do so briefly in the next section.

Dalit involvement and state reorganization

1. In accordance to their number in the nation, constitutional and legal measures should be created to allow Dalits to participate in all State institutions, whether they are elected or appointed, constituted by the constitution or law, or in any other manner.

2. To guarantee Dalits are fairly represented in the security forces, the bureaucracy, and all other entities working for the government, radical changes in how the State is governed and reorganization of its institutions, including the inclusion of reservations, must be made.

3. Measures should be taken to guarantee that the proportionate representation of the Dalit community in the representative, constitutional, legal, and all other bodies of the State is reflective of all sections of the Dalits based on their population.

4. In order to assure correct counting of Dalits and other members of the community, provisions should be established for an accurate population census by an impartial agency.

5. Dalit rights should be explicitly outlined in the constitution to guarantee that they are effectively implemented by the legislative, executive, and judicial branches of government as well as the constitutional body.

6. Dalit rights provisions should be implemented properly in light of the 2007 interim constitution's acceptance of the proportional representation premise.

7. Since Dalits would not be able to have their own state in a federal Nepal and would not benefit from a federal system as such, special provisions for arrangements that will address their economic, political, administrative, and socio-cultural problems should be made in the national constitution to ensure that they are not adversely affected by the federal system. Although it should be allowed for autonomous states to strengthen such protective provisions, precautions should be taken to ensure that they do not reduce the national constitution's protective provisions.

8. As the nation moves toward a federal form of government, provisions should be created in the constitution and the legislation to completely safeguard Dalit rights in provincial and municipal systems of government. Any religion or cultural legacy that permits caste discrimination and untouchability against Dalits in any form should not be granted any concessions in the distribution of power under such a society.

2. DISCUSSION

In Nepal's history, the Constituent Assembly is being held for the first time. All Nepali residents, regardless of their communities, castes, or ethnicities, have the democratic right to elect members to the Assembly that will draft a new constitution. Whatever their educational and professional backgrounds, all members of the Constituent Assembly should be able to contribute fully to the discussions thanks to the mechanisms in place. Political parties must make it easier for Dalit members of various parties to collaborate in order to realize the Jana Andolan's goals of social inclusion[7], [8].

All facets of Nepali society should be allowed to contribute to the Assembly via political parties, civil society organizations, and as individuals, according to the CA's processes. In order for Dalits and other marginalized backward communities to exercise their sovereign right to express their aspirations, thoughts, feelings, and issues independently and without

fear, the Constituent Assembly's procedures must allow sufficient time, ensure that the public is made aware of the issues, and ensure that the processes adopted by the Constituent Assembly to make a new constitution of Nepal are understood by all.

Political parties and politics

Dalits have always been denied positions of power in political parties and rejected as candidates for elective office. However, because to the restriction on organizations that exclude individuals from membership based on particular criteria, they have also been forbidden from forming parties that exclusively include Dalits. They may also be prevented from forming a party that is only focused on Dalit concerns on the grounds that it would be "divisive." Either by permitting "sectional" parties or by mandating that all parties be truly inclusive, a new Constitution must find a way to overcome this conundrum. The new constitution should ensure that political parties that claim to be national in scope and program must be inclusive in their organizational design and selection of candidates in order to guarantee the Dalit community's access, participation, and representation on an equitable basis. The Constitution need to compel the creation and effective implementation of codes of conduct against caste discrimination and untouchability for leaders and cadres of all political parties.

Opportunities for employment and the economy

Economic policy has not developed plans/policies or initiated programs to sustain, promote, or upgrade their professions, nor has it connected the economic role of Dalits with the country's policy. Dalit engagement in economic activities has been hampered by prevalent social, economic, and other barriers. Dalits have been ejected from their chosen industries and companies as a result of a lack of economic and social stability. Therefore, protecting Dalits' economic rights is essential for their empowerment and the community's overall growth. A constitutional clause is required to ensure Dalits' access while giving the economic sector precedence, especially via affirmative action. Radical land reform should provide the ownership of land for Dalit groups who now lack it. The State must take all necessary measures to put the right to work and to choose one's job into practice for the benefit of Dalits and other underprivileged populations. The State must take the Right to Development seriously, for which it has cast votes in UN bodies[9], [10].

In order to provide food security for the Dalit community, the Constitution should recognize the right to food, which entails that the State must respect that right, defend it from outside interference, and, if necessary, fulfill it. In order to develop entrepreneurship for the Dalit community by establishing small businesses, upgrading the skills required for Dalits' professions, and ensuring a market for their goods, the State should create provisions for government subsidies and loans without collateral. Additionally, it should be possible for Dalit communities to easily obtain microfinance services.

Justice must be served in labor law courts in cases involving the feudal land use system as a result of justice system reform. Policies should be developed to ensure that the Dalit community participates fairly and voluntarily in all government planning for development and other social change initiatives, as well as in all programs run by international and domestic non-governmental organizations. On the basis of constitutional principles, it is important to guarantee Dalit involvement in industries and businesses that they own or control in a proportional manner. Affirmative action should be required in bigger businesses to secure Dalit employment, and the State should also develop a policy supporting Dalit employment in the private sector on an equal basis.For individuals in great need, such as single women and Dalit women who must support their families, specific provisions should

be provided for employment and other benefits. Given that the majority of Dalit communities are below the poverty line and that poverty alleviation programs have not been successful in reaching these communities, the State should develop and put into practice effective policies in this area to reach the target populations. Given the challenges Dalits encounter in getting an education, the age requirement for Dalit applicants should be five years greater than that of other applicants for positions in the Nepal Army, Nepal Police, educational institutions, businesses, and other sectors.

Effective ways to reduce untouchability and caste prejudice

Untouchability must be explicitly declared to be an evil, against the Constitution, and outlawed in the new Constitution. It is important to define untouchability and caste prejudice. To ensure total protection of human rights and justice for the Dalit community, an analysis of the social, economic, and political realities of the Dalit community should be conducted before comprehensive legislation is established and put into effect. The National Dalit Commission should be established under the Constitution and its membership should be strong, efficient, and proportionately inclusive. By making the provisions for human rights applicable to both private individuals and organizations as well as to individuals and the state, the new constitution for Nepal should outlaw discriminatory acts based on the idea of untouchability not only in public settings but also in commercial and private relations such as employment, the provision of housing, and services of all kinds. Effective strategies must be developed to guarantee that untouchability and impunity be put an end to in the nation. It has to be handled as a severe social crime, a crime against the State, and a crime against humanity. Strong punishments for those who commit such crimes should be provided, as well as mandatory compensation for victims.The Interim Constitution of Nepal forbids caste discrimination and untouchability with the provision of compensation for the victim and punishment for the perpetrator, giving the impression that Dalits are entitled to all rights. The Universal Declaration of Human Rights of 1948 guarantees fundamental human rights to all people on a global scale. The fact is that, in the context of Dalits, the exercise and enjoyment of these rights are influenced by societal attitudes and behavioral norms. Therefore, going forward, the Constitution must guarantee that the Dalit community's basic rights and human rights are not abused in the guise of societal norms and values.

The future constitution must include not just a clear ban against discrimination, but also the obligation of the State to start, demand, and promote affirmative action programs for those who are less fortunate, including Dalits. The duty of protecting the basic rights of the nation's residents shouldn't fall only on the State at a time when Nepal is pursuing a privatization and liberalization agenda. Human rights need to be enforceable between individuals as well as by businesses, NGOs operating in the private sector, and INGOs.The right to shelter, food, water, education, and medical care should all be included in the constitution as social and economic rights, not only as Directive Principles. While performing its duties in relation to these rights, the State should prioritize the Dalit group. The legal enforcement of the rights is required.

In order to fulfill the right to education guaranteed by the International Covenant on Economic, Social, and Cultural Rights, to which Nepal is a party, provisions should be made for Dalit students to pursue free, high-quality education, which is required at the school level, with appropriate scholarships from primary level to higher education. The government should work to guarantee or promote the recruitment of at least one male and one female teacher from the Dalit community in every government and private school in order to bring about the dramatic change that is required in discriminatory attitudes and in the educational system as a whole. In educational institutions controlled by the private sector, the government should

make sure that scholarships are given to Dalit students in a balanced manner. The Dalit community's basic and human rights are violated when there is caste-based discrimination in the education system, both within and outside of the classroom. Those who support and participate in such behaviors should face severe penalties. Discriminatory terms, expressions, narratives, and statements should also be quickly deleted from textbooks and curricula from elementary to higher education. If physicians or other healthcare professionals discriminate against or refuse to treat someone equally on the basis of caste, this is a breach of their constitutional right to get healthcare. Therefore, provisions for severe legal punishment against health professionals and administrators who support and participate in such acts should be created. It should be regarded as a grave infringement of Dalits' right to water as well as of their basic and human rights if they are refused access to the source of water intended for the general population on the basis of their caste. Those who support and participate in such acts need to face severe legal consequences. It should be prohibited to build separate water faucets and spouts for Dalits and non-Dalits. Stopping the privatization of health services and making access to healthcare a basic right are two ways to ensuring that the Dalit population has access to health care. For Dalits to get free health care services, the State should issue special cards.

Cultural, Social, and Religious

The freedom to marry the person of one's choice should be protected by the Constitution. Anyone who opposes and rejects the right of individuals to marry on the grounds of caste discrimination should face severe punishment. The Constitution should mandate that the state and its inhabitants strive for the total abolition of all Acts, regulations, policies, and associated value systems that violate the freedom to autonomously choose one's spouse. Common societal vices as polygamy, burka pratha, chhaupadipratha, child marriage, and daijo pratha should be punished. Stopping someone from entering places that are sacred to their religion, from worshiping there, or from participating in communal religious or social activities is against their right to practice their religion, the secularist principle, as well as their right to a dignified life free from discrimination. For those who commit such crimes, there should be legal sanctions in place. The Dalit community's cultural legacy should be acknowledged, and concrete actions should be made to safeguard and advance its language, culture, and cultural heritage.

3. CONCLUSION

Implementing equality and social justice is a difficult endeavor that is still at the top of the social agenda. This essay has looked at the complexity of this problem, including how it affects access to opportunities, institutional discrimination, and economic inequities. It is obvious that establishing real fairness and social justice is a difficult process that requires constant effort. Even if there has been improvement in certain areas, the continued existence of ingrained inequality serves as a sharp reminder of the size of the work at hand. The road to a more equitable and inclusive society is nevertheless blocked by systematic prejudices, uneven access to decent healthcare and education, and income inequality. The difficulties are widespread and have an impact on individuals from all walks of life; they are not confined to a specific area or group. In conclusion, overcoming the difficulty of achieving equity and social justice calls for ongoing dedication and group effort. Governments must implement laws that promote equality and eliminate institutionalized prejudice. In order to spread knowledge and promote change, civil society groups and grassroots movements are crucial. Individual people may play a part in attempts to make the world more egalitarian by facing their own prejudices.

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CHAPTER 3

INTRICATE RELATIONSHIP BETWEEN LAW, JUSTICE AND FAIR ADMINISTRATION

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ABSTRACT:

This paper delves into the intricate relationship between law, justice, and fair administration within the context of contemporary societies. It explores the fundamental role of the legal system in upholding justice and ensuring the fair administration of laws. Through an analysis of legal frameworks, case studies, and ethical considerations, this study aims to elucidate the complexities and challenges associated with achieving a just and fair society through the rule of law.The abstract begins by examining the inherent connection between law and justice, emphasizing that law serves as a foundation upon which a just society is built. It acknowledges that while the law provides a framework for justice, its interpretation and implementation can be influenced by various factors, including societal norms, biases, and power dynamics. The paper also addresses the importance of ensuring equitable access to justice for all individuals, irrespective of their socio-economic status or background.It recognizes that the pursuit of justice and fairness is a continuous endeavor that demands vigilance, ethical considerations, and periodic reform of legal systems. The conclusion underscores the critical role of legal professionals, policymakers, and civil society in striving towards a society where the law not only exists but is also applied fairly and justly, ensuring that the principles of justice are upheld and that the rights and dignity of all individuals are protected.

KEYWORDS:

Accountability, Civil Rights, Equality, Fair Trial, Governance, Human Rights.

1. INTRODUCTION

Judges should be assigned cases based on their experience and qualifications to guarantee that the courts and quasi-judicial organizations are prepared to deal with Dalit concerns in a fair and effective manner. The legal system and judicial administration should be completely reorganized, and provisions should be made to organize suitable training and orientation programmes to orient judges, lawyers, government lawyers, and staff members working in each court and make them more aware of and sensitive towards caste discrimination and untouchability. Every court should have a team to ensure Dalits have access to legal representation. All citizens must be guaranteed the constitutional right to equitable administrative services, and in order to ensure its implementation, public employees must undergo specialized training, and codes of conduct must be created and effectively implemented to ensure that the Dalit community is treated fairly by employees of government and semi-government agencies, as well as NGOs and INGOs, and if necessary and practical by specialized offices[1], [2].

Dalit females

Dalit women experience prejudice on three fronts: as a Dalit; as a woman; and as a dalit woman. The government should acknowledge the suffering of Dalit women and create and enforce the necessary laws and regulations to help them. The State should guarantee Dalit

women's right to complete protection from domestic abuse as well as their equal involvement in marriage and divorce. To guarantee Dalit women's equitable access to and control over the family's financial assets, provisions must be created. The State should create policies and start initiatives to promote intercaste unions. The Badi community should not be exploited economically, educationally, socially, or culturally. The administration and the Badis should immediately put into effect the accord they struck[3], [4].

Even within Dalits, the Madhesi Dalits are the most disadvantaged group. Despite the terrain being exceptionally productive for agriculture, the majority of Terai Dalits do not own any land. Due to the country's dual land ownership policy and refusal to grant citizenship to many, Terai Dalits have been excluded from services that are provided to everyone else. There should be a solution to the issues affecting Madhesi Dalits, and their equitable participation in all facets of national life should be ensured. The State should provide Terai Dalits land and a place to reside in order to address the issue of landlessness among Dalits as soon as possible. There should be solutions addressed to the language-related problems facing the Terai Dalit population.

Communications and information

State-owned media should have a policy requiring that programs addressing Dalit issues be created, produced, and transmitted/telecast/broadcast for free. Additionally, strategies should be developed to ensure that private media covers Dalit issues fairly and accurately, as well as the contributions and accomplishments of Dalits in both private and public life. Opportunities should be offered to enlighten and educate the community in the current environment, where it is challenging to guarantee Dalit community members' access to publications from the public and private sectors and electronic media. The task to promote equality and the elimination of all forms of caste and gender prejudice should fall to the media[5], [6].

Throughout the ten-year insurgency, the Dalit minority suffered the worst at the hands of both the State and the insurgents. To learn the truth about the Dalit community's experiences during the conflict and to establish plans for their effective rehabilitation, the State should launch inquiries. For individuals who lost loved ones in the fight, crippled Dalits, and Dalit women who were sexually exploited, provisions should be made for fair compensation, medical care, psychiatric counseling, and employment possibilities.Dalits who go missing should be investigated, and the results should be made public. It is important to build a welcoming environment that would allow them to return home with dignity, especially by giving missing and internally displaced Dalit families fair compensation.

It is imperative that all Dalit children under the age of 18 who have been compelled to engage in hazardous employment as a consequence of insurgency both within and outside the nation be rescued and the appropriate provisions provided for their subsistence. There should be an immediate end to the prejudice that now exists when it comes to recruiting Terai people in the security services, and a quota should be established and a measure put into place to ensure that Madhesi Dalits participate proportionately in the Nepal Police, Nepal Army, Armed Police Force, and the civil service.

According to a study published in 2001 by Human Rights Watch

Dalit women in Nepal are exploited and economically disadvantaged both inside and outside of their households. Being the biggest group of people involved in physical labor and agricultural production, their employment often includes removing corpses, disposing of garbage, and working with leather. Despite their arduous jobs and lengthy hours, Dalit women are unable to make enough money to exist due to exploitative pay. Dalit women in

certain rural regions only make 10 to twenty kilos of food grain a year, which is not enough to support a family. Many people are forced into prostitution. A certain caste, the Badi caste, is targeted for sex labor in Indian brothels. The Committee on CERD also made comments on Badi women and girls. "The Committee expresses concern about the situation of forced prostitution of girls and women of the Badi caste and notes the absence of information in the periodic report on the position of women belonging to disadvantaged groups who are victims of many forms of discrimination.

Discrimination against Madhesi Dalits on several fronts

According to NDC, are Madhesi Dalit castes. All Madhesis in Nepal have been considered as second-class citizens, including Brahmins, Kshatriyas, Vaisyas, and Sudras. When it comes to recognizing Madhesis as Nepalese citizens, using languages like Maithili, Bhojpuri, and Awadhi in education, local government offices, and the media, as well as when recruiting Madhesis into the army, police, and civil service, the State has discriminated against Madhesis, including Madhesi Dalits, primarily on the basis of region, language, and culture. After the People's Movement Part 2, the Madhesi movement brought attention to the nation's discrimination against Madhesis. However, since the Madhesi movement has been led and controlled by the "high caste" Madhesis, there have been worries regarding the marginalization of Madhesi Dalits' concerns and problems. However, the Madhesi Dalits are unsure of how caste-based discrimination, including untouchability, will be abolished under the new set up since the Madhesi movement pushed the Nepal Government to agree to shift Nepal from a unitary to a federal State.

2. DISCUSSION

Dalits are prevented from raising their standard of living and social standing due to caste-based prejudice, poverty, illiteracy or poor levels of education, lack of awareness, and other factors. The fundamental cause of their continued existence in the deplorable condition previously mentioned is the condition's discriminatory philosophy, policy, and behaviors. Reservation of roles in decision-making positions at all levels and sectors, including political positions, the public service, the army, the police, and in employment, has been one of the main demands of the Dalit movement in Nepal. They see this as paying back the Dalits for past wrongdoings on the part of the State and as a way to close the gap between Dalits and non-Dalits in both the public and commercial sectors. Instead, then seeing it as the State being kind to the Dalits, they see it as their right. The recent government decision to guarantee seats for Dalits in the civil service, police, and army is a start in the right direction, but Dalits also want preferred corrective action.

Additionally, in order to fairly treat Dalit women, Madhesi Dalits, and Dalits who belong to the lowest castes in the hierarchy of Dalit castes, affirmative action inside affirmative action is necessary. Empowerment, Inclusion, and Integration of Dalits with non-Dalits at all levels is the aim of the Dalit movement. According to prominent Dalit intellectual and rights advocate Hira Viswakarma, "Social empowerment is a tool which enables the inclusion of a certain disadvantaged community into the mainstream society which ultimately leads to the total integration into such society."59 Dalit people, groups, and movements are seeking empowerment in terms of enhancing access, awareness, capability, including knowledge, skill, and information, voice, organizations, and movements.

With the help of international aid organizations, Dalit organizations and movements are working to empower Dalits so they can fight against all forms of caste-based discrimination by non-Dalits, gender-based discrimination against Dalit women, regional and linguistic discrimination against Madhesi Dalits, and internal caste-based discrimination against "lower

caste" Dalits. There are campaigns to persuade non-Dalits to stop using caste-based discrimination, such as untouchability against Dalits, gender discrimination against Dalit women, regional prejudice against Madhesi Dalits by Hill people, and caste-based untouchability by "high caste" Dalits against "low caste" Dalits. There are initiatives for Dalit empowerment in the areas of the constitution, law, administration, politics, sociocultural, economy, psychology, and spirituality, but they are currently insufficient. In terms of institutions, policies, attitudes, and incentives, Dalits desire inclusion. The two components of Dalit inclusion are intrinsic (inside the Dalit group) and extrinsic (within the larger environment). Higher levels of self-confidence, such as quitting thinking of oneself as a victim, greater awareness of rights and obligations, greater access to and/or control over justice, information, and resources, being more proactive than reactive in advancing the Dalits' cause, and greater mobility and visibility are all intrinsic aspects of Dalit inclusion. The participation of Dalits in social, political, and personal concerns, as well as a better degree of acceptability of Dalit groups in politics, government services, and economic activities, are examples of extrinsic factors[7], [8].

On the sociocultural, political, legal, economic, psychological, spiritual, and emotional fronts, the Dalit movement has fought for inclusion. Equal rights, equal opportunities, equal access, equal opportunity, equal sharing, equal outcomes, and equal duties are desired integration ideals. The term "integration" in the context of Dalits, according to Hira Viswakarma, refers to the total abolition of social class and full integration of Dalits into mainstream society, in which Dalits would be just one of many sub-castes with equal status within Nepali society.60 It also refers to the absence of discrimination in the social sphere and no longer being the lowest income group.

All other governmental and non-governmental organizations would take care of the matter, Dalit candidates would be chosen from non-Dalit areas, and marriages between upper caste Brahmin and Dalits would be freely accepted. The treatment of Dalits and Brahmins or non-Dalits as equals is implied. Eliminating the monarchy and successfully implementing secularism, federalism, and an equal society are New Nepal's key problems.The Hindu religion and tradition are the origins of Nepal's monarchy. Therefore, monarchy has aided in preserving and advancing the caste and varna system that oppresses Dalits. In order for Dalits to be freed from caste-based injustice, including untouchability, the Dalit movement has demanded the abolition of monarchy, with the exception of the few Dalits who are loyal to the King and those who are involved in political organizations who publicly support it.

For Nepal to become a democratic republic, according to Dalit leaders, the monarchy must be overthrown. This goal was accomplished during the CA's first meeting. Effective Secularism Hinduism generated and sustained the "Dalit" situation in South Asia via its influence on society and culture. Although some Dalits have converted to Christianity and some to Buddhism, the vast majority of Dalits in Nepal continue to practice Hinduism. Since caste-based untouchability and other types of discrimination are one of the defining characteristics of varna and caste in Hindu culture, debate rages on whether Dalits might do away with them. Hindu Dalits are committed to ending caste-based prejudice, including untouchability, and they believe that Nepal's acceptance of the Hindu faith as its official religion is to blame for the persistence of caste-based prejudice, including untouchability. Up until 2006, when the Interim Parliament proclaimed Nepal to be a secular nation, it was still a Hindu state. Later, this was included to Article 4 of Nepal's Interim Constitution. It is unknown whether this will be included into the new Constitution and what "secularism" would really entail in the new Nepal. It is important to remember that despite India's proclaimed secularism throughout its entire independent history, caste prejudice is still a significant issue[9], [10].

Federalism and Independence

Dalits are now disputing whether federalism is important to Dalit groups. Ahuti and Padma Lal Vishwakarma, two Dalit intellectuals who support federalism, argue that the discussion regarding how to guarantee Dalit rights and proportional representation in autonomous areas of a federal system has to be intensified. But given the emphasis on ethnicity as the foundation for the creation of the states within the federation, many Dalits are concerned about the consequences of their lack of a traditional homeland with population concentrations in certain geographic locations. Dalits are dispersed across the 75 districts' VDCs. However, Dalits have three options to exercise their autonomous rights and call for non-territorial autonomy for Dalits.

seek territorial autonomy for Madhesi Dalits in Siraha and Saptari in the Terai, as well as for Hill Dalits in the mid- and far-western portion of the Hills. Additionally, seek sub-autonomy within autonomous regions based on ethnicity, language, and geography. The majority of Dalit leaders and activists, however, are more focused on gaining proportionate representation in any autonomous area and the federal government due to the early stage of negotiations and have not yet investigated these other avenues of thinking.

Societal Equality

Academics, civil society activists, and political party leaders often advocate for fairness and equality in terms of caste, ethnicity, language, religion, culture, gender, area, and social class. Political groups that lean left desire a society and nation free of class, caste, and gender inequality. They believe that if the class issue is resolved, all other issues will also be resolved, including those relating to caste, race, language, religion, culture, gender, and geography. Some Dalits think that untouchability and other forms of caste-based discrimination are the root of all their troubles. A significant difficulty confronting the Constituent Assembly in particular and the Nepalese people in general is how to establish a "New Nepal" where all caste, ethnic, linguistic, religious, cultural, gender, regional groupings, and class will be treated equally.A Constituent Assembly is, or ought to be, a national assembly. It is a body that writes, and it writes three things or in three distinct ways, I would like to propose. The Constituent Assembly's main responsibility is to produce a brief book that will serve as Nepal's Constitution. The Constitution outlines the structure of the government, the sources of its authority, the manner in which those powers must be used, as well as the rights of the nation's citizens.

Although it may be the most significant statute in Nepal, it must not be too burdensome. The Constitution ought to be able to be printed in a pocket-sized book that people may use as a reference for both their rights and the duties of the government. The Proceedings of the Constituent Assembly, a large book or perhaps a series of volumes, will also be written by the Constituent Assembly. This ought to serve as a transcript of all of the Constituent Assembly's deliberations. This has relevance because it explains how the Constitution was drafted. If we consider the concept of inclusiveness, which has been the major demand since April 2006, the new Constitution is likely to use this phrase often and will undoubtedly explain it. However, it would be challenging to fully express the complexity of the inclusion concept in a legal document of that kind. But in the future, anybody attempting to comprehend or implement the Constitution will have access to the whole records of the Constituent Assembly's activities. Is this useful in any way? It is possible.

Even today, Indian courts use the Debates of the country's Constituent Assembly, which met from 1946 to 1949, to fully comprehend the intentions of the Constitution's authors. In such processes, not only the courts but also government officials, political figures, and the general

public may receive direction. But the Nepali people's hearts and thoughts will be written someplace else by the Constituent Assembly. The Constituent Assembly will be a significant national event—not just a significant national event, but a significant national event. It is an opportunity to redefine Nepal, who Nepalis are, and what it means to be a Nepali. If the Constituent Assembly is successful, the way government functions, how politicians behave, and how the public views government and their rights will all be permanently altered.

Demands

How does this connect to what the Dalits are asking for? All groups that have been pushing for justice, inclusion, increased control over their own lives, fair government, work, food, education, or other changes to their lives must take the necessary steps to ensure that these demands are reflected in the Constitution, the Assembly's proceedings, and the hearts of Nepalis through the Constituent Assembly. Therefore, even if the new Constitution just briefly addresses the subject of untouchability, it is quite obvious that the purpose is to put an end to that misery. The sufferings of Dalits must be recorded in the proceedings of the Constituent Assembly. And it has to become ingrained in Nepalis' hearts so that the whole country can embrace the Constitution's goals. Therefore, Dalits and other communities shouldn't confine their comments to straightforward legislative ideas to the Constituent Assembly. Making specific recommendations for Constitutional provisions would be beneficial, but they should logically follow from the Dalit situation's facts.

Even recommendations for specific legal rules might be made more broadly than you truly anticipate would ultimately be approved. The Constitution may ultimately represent those needs more succinctly, but if the whole demands have been considered and are viewed favorably, they will be included in the Constituent Assembly Proceedings and utilized to interpret the Constitution.It is crucial to comprehend a constitution’s nature before examining what it could say about these topics. Of course, it is a law because it establishes guidelines that the government and everyone else must abide by. But it is more than thatit is the nation's and its people's foundational document. The populace must be able to identify with it. It ought to represent a shared vision of the country. Although rules often lack passion, it may be very suitable for a constitution to contain some emotion and even something like to poetry. Some constitutions have acted somewhat as how-to guides for governing, outlining not only what must be done but also why.

Water

There is no reason why the right to get water cannot be included in the Constitution. The International Covenant on Economic, Social, and Cultural Rights, which particularly cites the right to food and includes the right to a reasonable standard of life, has been ratified by Nepal. This has come to mean that water is included. It does not imply that the government should open a magical tap and provide water to every residence. Some significant concepts from the International Covenant may be applied to the Constitution. These include nondiscrimination and progressive realisation, which means that the state must work towards the right being fully realized. There is also the notion that the government must make use of the tools at its disposal to implement such rights. Being unexpectedly wealthy enough to do miracles is not anticipated. The Constitution could provide that the state must prioritize those with the greatest needs.

Additional significant concepts have been established in the interpretation of the Covenant. Particularly, there is the notion that the most fundamental responsibility of the state is to safeguard rights, which entails that it cannot impede on an individual's ability to get water. The state also has a responsibility to defend that right against infringement by other parties,

which includes guarding against pollution and excessive use of water resources. Only when persons are unable to exercise their right on their own and when protective measures fail to do so, is there an obligation to actively uphold the right. Therefore, the focus is on individuals having the freedom to meet their own needs, with the state's responsibility being to assist them in doing so. The Constitution could succinctly state all of this.

Education

Another right recognized by the Covenant is education. In truth, it is required to provide elementary education immediately, not over time. One may even go so far as to suggest that the right to education involves the right to have educators from various backgrounds. Additionally, the right could extend to having a curriculum and educational materials that do not disparage any specific population.The right to work and to reasonable working conditions are both protected by the same covenant. These kinds of rights have been outlined in several constitutions. The same rules apply: The state must make efforts to uphold these rights, not by providing everyone with employment but rather by removing obstacles to work and by reasonably defending workers' rights, though in some cases, the state may also be required to take proactive measures to facilitate work.

3. CONCLUSION

Any democratic society's foundation is the interaction of law, justice, and fair administration. This essay has examined the complicated interrelationships between these components and has highlighted the difficulties and complications in their practical use. It is clear that the law is essential for establishing moral limits and establishing a framework for justice. However, a wide range of factors, such as social views, power dynamics, and prejudices, may affect how the law is interpreted and applied.

This may result in inequalities and discrepancies in the way the law is applied, especially for vulnerable and disadvantaged groups. The quest of a just and equitable society via the application of the law is a never-ending path that calls for continual attention to detail and moral concerns. It demands not only the presence of just laws but also their fair and consistent enforcement. To achieve this aim, legal professionals, legislators, and civil society must work together actively to eliminate structural prejudices, ensure that everyone has access to justice, and continuously improve the legal system to be more consistent with fairness and justice ideals.

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CHAPTER 4

EXAMINING THE VIOLENCE AGAINST DALIT WOMEN

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ABSTRACT:

This paper delves into the harrowing issue of violence against Dalit women, a deeply entrenched and pervasive problem in many societies, particularly in South Asia. Dalit women face a unique intersection of discrimination based on both caste and gender, rendering them among the most vulnerable and marginalized groups. Through an analysis of case studies, statistical data, and qualitative research, this study seeks to shed light on the multifaceted nature of violence against Dalit women, the root causes behind it, and the urgent need for comprehensive solutions.The abstract begins by acknowledging the historical and structural factors that perpetuate violence against Dalit women. It explores the various forms of violence they endure, including physical, sexual, and psychological abuse, as well as socio-economic exploitation. The paper also examines the role of entrenched social hierarchies and discrimination in enabling this violencethe critical importance of addressing violence against Dalit women as an essential step towards achieving social justice and gender equality. It calls for a holistic approach that includes legal reforms, social awareness campaigns, and support services to empower Dalit women and create an environment where their rights are respected, and they can live free from fear and violence.

KEYWORDS:

Abuse, Caste, Discrimination, Gender, Injustice, Intersectionality, Marginalization.

1. INTRODUCTION

Anyone can understand that a constitutional clause declaring "There must be no violence against women" would likely have little effect. Any act of violence against a person is already illegal. The issues that contribute to violence against women being such a problem in so many nations include culture, economic position, societal attitudes, attitudes of law enforcement agencies, and other factors. Even if it is complicated, the Constituent Assembly should still be able to consider it. At this stage, the message must be Put the subject on the Constitutional Assembly's agenda. Do not believe claims that the Constitution has no relevance in this situation. Insist that it is a subject worth discussing and that even the Constitution may include provisions that are pertinent to the matter.

Another difficult problem, and one for which a constitutional provision cannot provide a quick fix. But once again, this is a topic that a Constituent Assembly would be a perfect place to address. The Constitution could be able to eliminate certain barriers to land reform, such as the fact that in some nation’s property rights have prevented initiatives to provide land for the homeless.

This must be taken into consideration while discussing such a right. Perhaps there is some aspect of government that makes issues with land distribution difficult. Furthermore, under a federal system, the decision-making authority over this matter and the location of resource management may determine whether policies on land are successful. Getting the matter on the agenda of the Constituent Assembly and demanding that it get thorough attention are both crucial[1], [2].

Expressing Support for Dalit rights

The notion that Dalits won't attain public office, such as Chief Justice or Prime Minister, puts Dalits at a psychological disadvantage compared to other groups. It is the kind of expectation that many nations place on women. The South African Constituent Assembly used an innovative strategy and gender-neutral language while establishing their constitution in 1996. They went further to make it clear that when they indicated that a person may be president, etc., they meant any woman as well as any male. The National Assembly must choose a male or a woman from among its members to serve as President, according to the Constitution.Of course, things are far more complicated in Nepal. In a nation where for so long practically all public jobs were held by Hill Bahuns and Chhetris, not only women and Dalits but Madhesis and Janajatis suffer this sort of psychological obstacle.

Due to the basic concept of equality before the law, a lawyer can argue that this is not necessary. However, a constitution is not just for attorneys. The rights of women are covered in some depth in one or more articles of various constitutions. This is true despite the fact that most of the material just restates the fundamental idea that women and men are entitled to the same respect and rights. Again, this is due to the fact that other presumptions have supported the status of women in society for millennia. Similar thinking would allow for the inclusion of a "Rights of Dalits"-specific provision in the future Constitution. In addition to outlining the fundamental idea of equality, it may also address particular issues like water access, education, the state's responsibility to promote social change, and perhaps even the unique situation of the Badi people. Reiterating that this is a matter worth bringing up, it would spark fruitful conversation and put Dalit issues generally on the agenda and in the records of the Constituent Assembly[3], [4].

Inclusion

Perhaps not much else needs to be said about this. Since inclusiveness has been a major topic of debate thus far, the Interim Constitution is far more inclusive than any prior constitution. Theoretically, inclusion has been attained. The Constituent Assembly should consider whether the present rules are the best method to do this, particularly in light of the recent elections. In order to guarantee that inclusion in the public sector is really realized, new laws and procedures will be required. Political parties need to be strictly regulated, as the CHRGJ Briefing Paper argues.The kamaiyas have often been set loose from bonds of servitude. Despite the fact that this is illogically impossible, it shows how ineffective laws and constitutions may be. Additionally, there are still certain traditional unequal labor relationships, such as haliyas. The concerns in Nepal might be addressed more specifically in a new constitution, which could also include some kind of recompense for those who lose their "chains" but also their means of support, as occurred to the kamaiyas. It would be difficult to write an effective provision, one that grants actual yet fair rights. The Interim Constitution did provide a guarantee of compensation, but it wasn't one that could be legally enforced.The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their employment, education, and health, among other nice-sounding clauses, which can be found in the 1990 Constitution.

You may be inclined to ask why there were so few indications that the State was carrying out any of this. The fact that this is only "State policy" and does not confer any legal rights is one rationale that might apply. So, you may claim that it doesn't generate a legally binding obligation. Such provisions are present in a number of nations. These clauses have sometimes been given some legal sway by inventive courts, although it is considerably more difficult

than in the case of rights that may be litigated. The South African constitution, for instance, does not include such unenforceable clauses, but it does contain rights to access to housing and to health care, both of which may be the subject of a court case. Another weak or ineffective provision is one that calls for the passage of legislation. No one may be discriminated against on the basis of caste, according to the 1990 Constitution, and "Any violation of this provision shall be punishable by law." But if no such legislation is ever enacted, the clause is essentially meaningless. The Constitution has sometimes been read to mean that "there must be a law."

The right to information was written in such a way that it did not specify that there must be a legislation, but it seemed to be assumed that the right was meaningless without the law, which had only recently been approved.The Constitution said that certain rights were "given with one hand and taken away with the other" and that privacy is inviolable "except as provided by law". This implies that a legislation may revoke the rights. When creating ideas for clauses in the new Constitution, Dalits and other communities should avoid include such clauses. Additionally, it would be feasible to provide provisions for the Constitution's active implementation. Some have proposed that the new Constitution establish a special commission with the mandate to oversee the Constitution's implementation to the greatest extent feasible. Additionally, if a new law is needed by the Constitution but is not approved, it may be argued that the courts should be forced, to the extent practicable, to create the legislation necessary to enforce the Constitution[5], [6].

2. DISCUSSION

The Dalit community has limited experience with becoming members of parliament, and because there hasn't been much in the way of efficient municipal governance lately, there isn't much experience even at that level. Dalit and the other newcomers will need assistance. This assistance may take many different shapes. There will be some emotional content. People who have traveled to Kathmandu to serve in the Constituent Assembly may feel lonely if they are distant from their homes and families. The job of the Constituent Assembly may be taxing at times. Other assistance will be useful. Materials for the members to utilize in discussions must be provided. That information has to contain specific recommendations for clauses in the new Constitution as well as background data to back up the recommendations. It must have information to refute any objections to the scenarios that may be raised.Women members may want more assistance and support. What will happen if they have kids at home who are dependent on them? The neighborhood should be ready to provide child care assistance for Constituent Assembly members and to come together in the event that a woman's family member becomes ill. Adopting its norms of procedure will be one of the Constituent Assembly's first actions. Consideration should be paid to making sure that they promote rather than impede each member's full engagement. Women would undoubtedly suffer if the Constituent Assembly is allowed to work through the night. Members who are uncomfortable speaking in public in Nepali could be less likely to participate if they must use Nepali to address the Assembly. Additionally, rules should forbid the use of terms that are disparaging of any particular member or group of members[7], [8].

Personal Accountability of Members

The 601 Constituent Assembly members will be under a lot of pressure. Many of them will have just a vague idea of what a constitution. That is normal. However, it does imply that each member must take on the duty of making an effort to understand as much as they can about what a constitution is and how it functions. They should also make sure they are aware of both the party's policies and the issues that are relevant to their particular areas. No

member should see themselves as just "voting fodder"individuals whose only duty is to cast ballots in accordance with the wishes of the party. Members are required to study up on problems and constitutions. They must actively pursue the chances that will undoubtedly be provided to learn about the Constituent Assembly's activities. They have to gain public speaking skills. They must get acquainted with the information offered by numerous organizations that is pertinent to their worries. They will have a special obligation to educate themselves on the matters pertaining to the topic committee they serve. They must study not just what the plan is and what the reasons in favor of it are, but also what the arguments against it will be in regard to the topics in which they and their community have a special interest. They also need to be able to assess the truth of the opposition's arguments, and if they do, be willing to rethink their position. If not, they must be able to refute them. Additionally, people must be ready to listen since those who do not will never comprehend what is happening or the points being stated by the other side[9], [10].

The potential conflict between members' obligations to the party, their own community, and other causes will be a particularly challenging problem for them. The best course of action is often to attempt to convince one's own party that a specific provision desired by the Dalit community or a particular area is something the party should embrace as a policy. What happens, though, if the party just rejects this stance? There is a chance that a party may attempt to punish a member for deviating from party policy. According to the Interim Constitution, a person who is expelled from their party would also lose their seat. But hopefully the parties will acknowledge that each person has multiple identities. Members will include men and women, Dalits, Janajatis, people with disabilities, Muslims, Buddhists, environmentalists, professionals, farmers, etc., and they will all have opinions on what is needed to further the interests of these many groups. Members who are Dalit, Janajati, or women, for example, will need to form alliances outside of their own parties. Parties should acknowledge that this could be in the country's best interests as a whole rather than seeing it as just betraying their devotion. Parties that want to caucus across party lines will not be allowed to fire all Dalits, Janajatis, women, or Madhesis.

Anyone who carefully examines the 1990 and Interim Constitutions may come to the conclusion that they are useless tools, yet even the 1990 Constitution has many fine-sounding rights clauses, notably those for Dalits. Would Dalits' situation have been as dire if the 1990 Constitution had been completely implemented? Even when going to court is an option, the outcomes could be unsatisfactory. The inadequate execution of Supreme Court rulings on human rights has been noted. For orders to enact legislation, there is notably no efficient enforcement mechanism. Making an efficient binding mechanism is in fact a difficult task. The true authority that courts have to implement their rulings on constitutional issues is the ability to hold people accountable for contempt of court, which carries a potential jail sentence. This individual must have been given the instruction to do an act that they were capable of performing but did not. Who must act when "the government" is mandated to enact legislation? What precisely are they required to do? When the legislature is in charge of making laws, how can the government be told to do so? The fact that courts can only handle a limited number of cases is another issue with depending on them. Additionally, they are slow. Legal action has merits, but it cannot replace political action. It can be essential to use political pressure to guarantee that even judicial judgments are followed. However, it is possible to write a constitution with additional built-in safeguards to make sure it is carried out. The phrase "according to law" should be taken with the utmost skepticism since it often has the effect of tying rights to legislation that may never be approved.

As far as feasible, judges should have the authority to uphold crucial rights without the need for new legislation. If the administration does not act within a reasonable amount of time, a constitution may even provide the courts the authority to create orders that have the force of law. The Constitution may establish unique mechanisms, such as an independent commission for a period of perhaps five years, to monitor implementation, to publicize successes or failures in implementation, to make specific proposals for new laws that are necessary, and with the authority to apply for court orders compelling the authorities to take the steps required to implement the Constitution. Additionally, the public may be granted extensive rights to contact reliable institutions, such as courts and organizations like the Human Rights Commission.

The answer to the question at the start of this section is presumably obvious: "No." No matter how wonderful a constitution is, it will still need to be enforced by really efficient and independent organizations. Even though the Constitution states that "a body shall be appointed," someone must actually appoint the body; only the courts may do so with a legally enforceable order. Additionally, the people themselves must take action to defend their rights as well as the rights of others. Constitutions are sometimes crucial. They may be crucial because they hinder the exercise of legitimate rights. However, they may also provide rights that have real worth. But if they stay on the paper, they will have no impact. People demand that their rights be realized by political and judicial action, thus the rights must come alive. Respect for rights must be taught to government employees.

Those who have experienced discrimination in the past must demand to be treated with respect. Genuine Dalit freedom will come through a revolution, in which the Constitution will play a vital but yet little role. Recasting Justice Securing Dalit Rights in the New Constitution is the result of a very thorough project of study of the Interim Constitution as well as the situation of Dalits in Nepal, which was the subject of an earlier CHRGJ report The Missing Piece of the Puzzle Caste Discrimination and the Conflict. The Center for Human Rights and Global Justice at New York University has kindly allowed us to include the summary of their publication that follows. This brand-new report, which will be translated into Nepali, was released by the Jagaran Media Center in Nepal in April 2008. The ability to increase the number of individuals who can access our magazine makes us extremely happy. Following a conversation with the CHRGJ, we provide the few remarks that are listed below.

1.More Dalits now have the citizenship certificates to which they are entitled as a result of the recent citizenship certificate distribution operation. The new Constitution should make it clear that citizenship and the documentation of it in the form of citizenship certificates are rights. There are two difficulties here, in our opinion. Separately, unless there is a very solid cause, it is improper to provide rights to just citizens.

2.The goal of the recommendation that the Constituent Assembly "Ensure that the new constitution's equivalent to Article 23 contains a similar clause prohibiting the encroachment on the religious rights of others" is to ensure that Dalits, like other people, are able to exercise their religious freedoms, such as being allowed to enter temples. It should therefore be read in conjunction with other recommendations, such as the one on page 10 to "Include language that explicitly prohibits exploitation in the name of religion" and the one that comes immediately after it to "Prohibit the use of religion to encroach upon all fundamental rights and freedoms of others" because there is a chance that some people will claim that their religious freedom includes treating Dalits as inferior. Therefore, it should be obvious which principle is prominent in the new Constitution.

3.While we would agree that the inclusion of economic, social, and cultural rights in the Interim Constitution is to be welcomed, we would point out that these rights are weakened by the clause that the majority of them are "according to law" (for example, Article 17 on education, Article 18 on social security, and Article 17 on basic health services, while the right to property is subject to the law currently in effect). These kinds of formulations must only be used when absolutely essential, together with measures that make the new Constitution as "self-executing" as feasible and that guarantee additional implementing procedures are really taken. The Right to Information Act took 17 years to pass; the public shouldn't have to wait nearly as long for the new Constitution to take effect. The recommendation that the new Constitution "Establish the National Dalit Commission as a constitutional body" is in line with the report's emphasis on Dalit rights. This is driven by a desire to establish powerful organizations to defend rights and a worry that the Dalit Commission has in the past lacked sufficient legislative authority, autonomy, and sovereignty. It does not follow that having a distinct body for each underprivileged group is the answer. Too many people might put a burden on the country's financial and human resources. Think about a Dalit girl who experiences some kind of unconstitutional treatment. Would she go to the Human Rights Commission, the Women's Commission, the Children's Commission, or the Dalit Commission to report the abuse? The question of "one commission or manygenerated a lot of debate throughout the globe.", and opinion has shifted in favor of less strong entities in a number of nations, including the UK, South Africa, and Australia. There is no doubt that the CA should talk about it.

Interim Constitution of the Year 1990

Preamble We are further motivated by the goal of securing to the Nepalese people social, political, and economic justice long into the future; and Whereas, it is expedient to promulgate and enforce this Constitution, made with the broadest possible participation of the Nepalese people, to ensure that every citizen of Nepal has access to fundamental human rightsexpressing our unwavering commitment to democratic principles and values, such as a system of competitive multiparty democracy, civil liberties, basic rights, human rights, adult voting rights, regular elections, complete press freedom, judicial independence, and concepts of the rule of law; similar sentiments are more fully expressed in the interim constitution. Reaching out to the populace and giving them the impression that the Constitution is for them is one purpose of a preamble. From a legal perspective, the Preamble may be examined by the courts to get a sense of the spirit of the text. However, relying on the Preamble to have legal force is not advised.

Enlisting Madhesi, indigenous ethnic groups, Dalits, women, and individuals from underdeveloped and other areas into the armed forces on the basis of the principles of equality and inclusivity will be guaranteed by law in order to give the Nepal Army a national character and make it inclusive. A legislation must be passed in order for the new provision to take effect. It is crucial that Dalits and other people have access to the rights guaranteed by the Constitution. This implies that if any rights are violated, the Human Rights Commission, another entity with the authority to handle such allegations, or the courts must be notified. The rights of Dalits have been the subject of many proceedings before Nepali courts. Some of these may be categorized as "public interest litigation." PIL aspires to equally defend everyone citizen's basic rights, regardless of their socioeconomic status, level of illiteracy, or poverty.We are looking at a specific kind of public interest lawsuit that the Indian Supreme Court created. The court's chosen process departs from customary court practice in a number of respects.

Cases may be initiated legally by a letter to the court, and sometimes judges may initiate cases on their own initiative after reading about an injustice in the media. Even if NGOs themselves have no legal stake in the issue, concerned organizations like them have been able to launch lawsuits on behalf of underprivileged populations.In order to examine problems and report to the courts, the court has established committees or commissioners. However, in most circumstances, the parties and the courts are responsible for proving the facts. The court will demand that the relevant public entity update the court on its progress. Only when human rights are at issue and when the rights of the underprivileged may these exceptions to the usual court norms be invoked. The community's wealthier segments are expected to abide by the customary regulations. Famous PIL cases have dealt with issues including the blindness of "under trial" inmates in Bihar, women's state-run shelters, and a number of environmental issues like mining in the Doon Valley and Delhi's diesel buses. It wasn't a PIL case, but rather a recent matter before the Indian Supreme Court. It dealt with the usage of the term "chamar" to describe a Dalit. An excerpt from this article from The Hindu on August 20, 2008 is included in the box. This highlights the significance of legislation to uphold Constitutional ideals and the significance of the Dalit impacted taking the initiative to demand his rights.

3. CONCLUSION

A coordinated effort is needed to address the heinous and pervasive issue of violence against Dalit women. This essay has shed light on the complex nature of the violence Dalit women experience as a result of the junction of caste and gender-based prejudice. Dalit women experience a variety of maltreatments, including economic exploitation, psychological distress, and physical and sexual assault. Societal hierarchies and institutional discrimination, which maintain power disparities and legitimize injustice, are the primary drivers of this violence. In conclusion, eliminating violence against Dalit women is essential for attaining social justice and gender equality. It is also a moral need. Comprehensive remedies must include education and awareness efforts to combat stereotypes and prejudices, as well as legislation changes that improve victim protection and legal options. Support programs that provide Dalit women the skills and resources they need to escape cycles of violence and prejudice are also crucial.

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CHAPTER 5

NATIONAL COMMISSION FOR SCHEDULED CASTES: AN OVERVIEW

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ABSTRACT:

The National Commission for Scheduled Castes (NCSC) is a vital institution established in many countries to safeguard the rights and welfare of Scheduled Castes or Dalits. This paper examines the role and significance of the NCSC in addressing the social, economic, and political challenges faced by these historically marginalized communities. Through an in-depth analysis of the functions, powers, and impact of the NCSC, this study aims to shed light on the institution's effectiveness in promoting social justice, equality, and empowerment for Dalits.The abstract begins by providing an overview of the historical context that necessitated the creation of the NCSC, emphasizing the long-standing discrimination and social exclusion faced by Dalits. It outlines the primary functions of the commission, which include monitoring the implementation of protective laws, investigating atrocities against Dalits, and making recommendations for their socio-economic development. The paper also discusses the challenges and limitations the NCSC faces in fulfilling its mandate.

KEYWORDS:

Affirmative Action, Dalit Empowerment, Discrimination, Equality, Marginalized Communities, Minority Rights.

1. INTRODUCTION

The goal of directive principles of state policy is to steer the state in the direction of achieving certain ideals that are seen to be essential in society65. These principles are not enforceable in any court. The abolition of all forms of political and socioeconomic discrimination is one of these principles. These guiding principles of state policy must be upheld by the government in all areas, and the judiciary must work to put them into practice wherever it can. As you'll see Tribhuvan University declared that for M.B.B.S. and other medical programs, a 45% reservation was required for Dalits, women, and other underprivileged groups, with the remaining 55% being available to public competition. This was contested on the grounds that it violated Articles 11, 12, and 16 of the Constitution because it violated the right to equality guaranteed by those provisions. Although the reservation of medical seats was intended to promote substantive equality among citizens, the court determined that it could not be regarded as legal because, in accordance with Articles 11 and 24 of the 1990 Constitution, legislation must first be passed before reservation can be declared. But the court ordered the government to adopt laws in this area while taking the Directive Principles of State Policy into consideration [1], [2].

According to the 1990 Constitution, the Supreme Court of Nepal may provide remedies for violations of human rights, including via a process like to the Indian PIL.The following concerns involving Nepal's Dalit rights have come up in public interest lawsuitssocial injustice.

1. Dalit women's rights, particularly for Badi women.

2. Discrimination against dalits while utilizing utilities and public spaces.

3. The unfair treatment of dalits in regards to equitable access to natural resources.

4. Discrimination inside the marriage.

5. Discrimination based on traditional, religious, and social practices.

6. The need for strong legislative protections against Dalit discrimination.

7. Discrimination based on where someone resides.

8. Dalit rights enforcement via guiding principles of state policy.

A Lack of Diversity in Public Water Sources

On the grounds that discrimination violates Article 11 of the constitution's guarantee of equality, a public interest lawsuit was brought to end the practice of designating separate public water sources for certain castes and to recognize their right to utilize such sources. Additionally, it was in violation of Article 26 of the Constitution, which dealt with the Directive Principles of State Policy and aimed to improve relations between the different populations.Public interest action was brought against the practice of granting Dalit people citizenship based on their chosen professions rather than surnames. This has resulted in discriminatory policies that restrict Dalits from pursuing other occupations or renting housing, and it has facilitated different types of social isolation[3], [4].

The Court determined that since the Dalits were not treated equally with other citizens of the nation, it was manifestly discriminatory to grant citizenship to them based only on their occupation and not their surnames.The Court ordered the Government to make sure that Dalits get citizenship based on their individual surnames and not on their line of work. to provide Dalits proper citizenship based on their last names, treating them equally in all ways with other citizens.Due their father is unknown; it might be difficult for the children of Badi women who are forced to work as prostitutes due of their caste position to get their citizenship documents. Particularly under the 1990 Constitution, which solely granted citizenship via the father, this was the case.According to Article 9 of the constitution, which states that "Every child who is found within the kingdom of Nepal and the whereabouts of whose parents are not known shall, until the father of the child is traced, be deemed to be a citizen of Nepal by descent," the Supreme Court determined that such children were entitled to citizenship.

Dalits cannot enter the Sanskrit Hostel.

The qualifying requirements for students to remain in the Tindhara Sanskrit dorm were challenged in a PIL suit. One had to conduct bartabandha, among other things, in accordance with the norms of the university hostel in order to enter. According to the Supreme Court, this requirement for admission to the dormitory was obviously in violation of the right to equality guaranteed by article 11 of the Constitution. The court ordered the institution to only establish admission standards that complied with the Nepali Constitution's guarantee of equality.

Equal Opportunity

Equal protection under the law and equality before the law are rights that no one may be denied by the State within the boundaries of India. Discrimination against citizens prohibited based only on their religion, race, caste, sex, or place of birth. The State is not allowed to discriminate against any citizen based solely on their religion, race, caste, sex, or place of birth. No citizen shall be subject to any disability, liability, restriction, or condition regarding the use of wells, tanks, bathing ghats, roads, or public resorts maintained wholly or partially

out of State funds or designated for the use of the general public on the basis of one's religion, race, caste, sex, or place of birth, or any combination of those factors. Nothing in this article shall preclude the State from providing for women and children in a specific manner. The State may make any specific provisions for the progress of any socially and educationally disadvantaged sections of people, as well as for the Scheduled Castes and the Scheduled Tribes, without being prohibited by this article or article 29's clause[5], [6].

Equal opportunity in hiring for public positions

All citizens shall have an equal chance to apply for jobs or be appointed to positions within the state. No citizen will be excluded from or subject to discrimination in connection with any occupation or position under the State solely on the basis of religion, race, caste, sex, descent, place of birth, or domicile, or any combination of these factors. Nothing in this article shall prevent Parliament from passing a law specifying a requirement for residence within a State or Union territory prior to employment or appointment to a class or classes of offices under the government of, or any local or other authority within, a State or Union territory. The State may make any provisions for the reservation of appointments or postings in favor of any disadvantaged class of people that, in the State's judgment, is not sufficiently represented in the services under the State without being restricted by the provisions of this article. Nothing in this article shall prevent the State from establishing any reservation for the Scheduled Castes and Scheduled Tribes who, in the State's opinion, are not adequately represented in the services under the State, in matters of promotion, with consequential seniority, to any class or classes of posts in the State's services.

2. DISCUSSION

Nothing in this article will affect the application of any law that mandates that a person must profess a particular religion or belong to a specific denomination in order to hold a position of authority over the business of a religious or denominational institution or be a member of its governing body. The term "Untouchability" is banned, and any form of its practice is prohibited. Any handicap imposed as a result of "Untouchability" is illegal and will be punished accordingly[7], [8].

Firmly Opposed to Exploitation

Forced labor and human trafficking are illegal, and anybody found in violation of this rule will be held legally liable for their actions. Beggar work and other similar types of forced labor are also forbidden. Nothing in this article is intended to preclude the State from requiring mandatory service for public reasons, and while doing so, the State is prohibited from discriminating only on the basis of race, religion, caste, or class. Protection of minorities' interests – Any segment of the population living on Indian territory or a portion thereof with a unique language, script, or culture should have the right to preserve the same. No citizen shall be excluded from enrollment in any educational institution supported by the State or receiving financial assistance from the State solely on the basis of religion, race, caste, language, or any combination. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes, and other weaker groups. The State must take special care to advance the educational and economic interests of the weaker groups of the population, particularly of the Scheduled Castes and Scheduled Tribes, and must safeguard them from social injustice and all forms of exploitation.

These seats may be allocated by rotation to different constituencies in a Panchayat. Women from Scheduled Castes or, where applicable, Scheduled Tribes must be given preference for at least one-third of the entire number of seats designated under clause. One-third or more of

the total number of seats in each Panchayat that will be filled by direct election must be set aside for women, and these seats may be distributed by rotation among other Panchayat constituencies. The positions of chairpersons in panchayats at the village level or any other level must be reserved for members of the Scheduled Castes, Scheduled Tribes, and women in accordance with any legal provisions made by a state legislature.The number of Chairperson positions reserved for Scheduled Castes and Scheduled Tribes in Panchayats at each level in any State shall bear, as nearly as possible, the same proportion to the total number of such offices in Panchayats at each level as the population of the Scheduled Castes or Scheduled Tribes in the State bears to the total population of the State. When the time frame outlined in article 334 has passed, the reservations of seats under clauses and the offices of chairpersons under clauses will no longer be in force[9], [10].

In this article and article 332, the term "population" refers to the population as determined at the most recent preceding census for which the relevant s have been published. However, until the relevant s for the first census taken after the year 2026 have been published, the reference to the most recent preceding census for which the relevant have been published shall be construed as a reference to the 2001 census.Representation of the Anglo-Indian Community in the House of the People,despite anything in article 81, the President may nominate no more than two members of the Anglo-Indian community to the House of the People if he believes that community is not adequately represented there.

Reservation of seats for Scheduled Castes and Scheduled Tribes in State Legislative Assemblies, In the Legislative Assembly of every State, seats must be set aside for Scheduled Castes and Scheduled Tribes, with the exception of the Scheduled Tribes in the autonomous districts of Assam. In the Legislative Assembly of the State of Assam, seats must also be allocated for the autonomous districts. The number of seats reserved for Scheduled Castes or Scheduled Tribes in the Legislative Assembly of any State pursuant to this clause shall bear, as nearly as practicable, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved.Claims of Scheduled Castes and Scheduled Tribes to Services and Posts. The claims of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistent with the maintenance of administrative efficiency, in the making of appointments to services and posts in connection with the affairs of the Union or of a State Provided that nothing in this article shall prevent the making of any provision in favor of the members of the Scheduled.

The National Commission for the Scheduled Castes will be the name of the commission that would represent the scheduled castes. The Commission will be comprised of a Chairperson, Vice-Chairperson, and three other Members, subject to the provisions of any laws passed by Parliament in this regard. The Chairperson, Vice-Chairperson, and other members who are so appointed will serve under the terms of service and tenure that the President may specify by rule. The President shall appoint the Chairperson, Vice-Chairperson, and other Members of the Commission by warrant signed by him and sealed. The Commission will have the authority to control how it operates.The President should arrange for the presentation of all such reports to each House of Parliament, together with a letter outlining the actions taken or intended to be taken in response to the recommendations pertaining to the Union and the reasons, if any, for the proposals' non-acceptance. A copy of the report must be sent to the governor of the state whenever it or any portion of it relates to a matter that the state government is interested in. The governor will then arrange for the report to be presented to the state legislature along with a memo outlining the actions taken or planned in response to

the recommendations that pertain to the state and the reasons, if any, for any recommendations that were not accepted.

The Commission shall have all the powers of a civil court trying a case when looking into any matter referred to in subclause or looking into any complaint referred to in subclause of clause, particularly with regard to the following matters: summoning and compelling the attendance of any person from any part of India and questioning him under oath;

1. Mandating the search for and production of any document.
2. Obtaining affidavit-based evidence.
3. Requesting a copy of any public document from a court or agency.
4. Establishing commissions to examine documents and witnesses.
5. Any other issue that the President may rule upon.
6. On all significant policy issues impacting Scheduled Castes, the Union and each State Government should contact the Commission.

Listed Castes

The President may designate the castes, races, tribes, or portions of or groups within castes, races, or tribes that shall be deemed to be Scheduled Castes for the purposes of this Constitution in relation to any State or Union territory, as the case may be, after consulting with the Governor of that State or Union territory.Any caste, race, tribe, or portion of a caste, race, or tribe may be included in or excluded from the list of Scheduled Castes specified in a notification issued under clause by law, but save as noted above, a notification issued under the said clause shall not be varied by any subsequent notification.

Government of Sri Lanka

Everyone has a right to equal protection under the law since they are all created equal before the law. No citizen shall be subject to discrimination on the basis of race, religion, language, caste, sex, political opinion, place of birth, or any other such grounds; however, it shall be legal to require a person to acquire within a reasonable time sufficient knowledge of any language as a requirement for any employment or office in the public, judicial, or local government service, or in the service of any public corporation, where such knowledge is reasonably necessary for the position.

Furthermore, it shall be legal to require a person to possess appropriate language skills as a prerequisite for any such work or office, provided that no function of such employment or office can be carried out without a knowledge of the applicable language. No one shall be subject to any disability, liability, restriction, or condition regarding access to stores, public restaurants, hotels, places of public entertainment, and places of public worship of his own religion based on grounds of race, religion, language, caste, sex, or any other such grounds. Nothing in this Article prohibits the creation of special legislation, subordinate legislation, or executive action for the progress of women, children, or people with disabilities.

Bangladesh's Constitution

This has a clause that is fairly similar. Equal opportunity in public jobs is another benefit. All citizens shall have an equal chance to obtain employment or office in the Republic's government. No citizen will be excluded from or subjected to discrimination in connection

with any occupation or post in the service of the Republic on the basis of simply their religion, race, caste, sex, or place of birth.

There is nothing in this article that prohibits the State from:

1.Establishing particular provisions in favor of any underrepresented group of individuals in order to ensure their sufficient representation in government;

2.Giving effect to any regulation that provides that only members of a certain sect or denomination may be appointed to positions related to that institution;

3.reserving any kind of job or office for members of one sex on the justification that it is seen to be inherently unsuitable for individuals of the other sex.

The Pakistani Constitution

In accordance with the legislation, no person may be refused admission to a school that receives funding from public funds based solely on their race, religion, caste, or place of birth. Nothing in this Article may prohibit any public authority from providing for the progress of any class of persons who are socially or educationally disadvantaged. Access to public spaces must be open to everyone without prejudice. There cannot be any discrimination against any person based solely on their race, religion, caste, sex, location of residence, or place of birth when it comes to access to public recreation areas or resorts that are not exclusively for religious reasons. The State may make any necessary specific provisions for women and children without being hindered by the clause.No person who is otherwise eligible for employment in the government of Pakistan may be denied employment on the basis of their race, religion, caste, sex, place of residence, or birthplace alone. With the caveat that positions may be reserved for people from any class or region for a time frame no longer than years from the start date in order to ensure their sufficient representation in the service of Pakistan. Other nations would not have laws addressing caste directly. However, there are restrictions for certain communities and groups who have already experienced discrimination or deprived conditions. One glaring example is South Africa, where black people still experience poverty, landlessness, and other issues today despite historical discrimination against them. The South African Constitution has several measures that are designed particularly to address these historical injustices.

Continent of South Africa

1.The Republic of South Africa is a solitary, independent, and democratic nation built on the following principles.

2.the growth of human rights and freedoms, equality, and human dignity.

Equality

Everyone has the right to equal protection under the law and is treated equally in the eyes of the law. The complete and equal enjoyment of all rights and liberties is a component of equality. Legislative and other actions that protect or advance individuals or groups of individuals who have been negatively impacted by unjust discrimination may be conducted in order to advance the cause of equality.

Human decency

Everyone has the right to freedom of speech, but this right does not extend to inciting violence or promoting hate based on racial, ethnic, gender, or religious distinctions or other factors that might lead to damage.

Trade, Career, and Occupation Freedom

Every individual has the freedom to choose their line of work, industry, or profession. A trade, career, or profession may be subject to legal restrictions.

Property

No one's property may be taken from them unless it is done so in accordance with general law, and no legislation may allow taking someone else's property without justification. For the purposes of this section, the public interest includes the nation's commitment to land reform and to reforms to achieve equal access to all of South Africa's natural resources. The state must, within the limits of its resources, take reasonable legislative and other measures to foster conditions that allow citizens to obtain access to land on an equal basis. To the extent specified by a Parliamentary Act, a person or community whose tenure of land is legally precarious due to previous racially discriminatory laws or practices is entitled to either tenure that is legally secure or to similar restitution. In order to address the effects of historical racial discrimination, no provision of this section may prevent the state from taking legislative and other measures to achieve land, water, and related reform, provided that any deviation from the provisions of this section is in accordance with the provisions of section 36.

3. CONCLUSION

In conclusion, this essay highlights the NCSC's crucial contribution to the cause of Dalit rights and the advancement of their socioeconomic and political inclusion. It acknowledges the commission's successes in fostering greater awareness, securing legal safeguards, and influencing public policies to the advantage of Dalit communities. To address the persistent, deeply established disparities, it also emphasizes the necessity for ongoing monitoring, resource allocation, and empowerment efforts. The NCSC is a helpful instrument for furthering social justice, but ultimately its success relies on ongoing efforts from all parties involved to abolish caste-based prejudice and raise the weak. In the continuous fight for Dalits' rights and empowerment, the National Commission for Scheduled Castes (NCSC) stands as a ray of hope. The NCSC's diverse role and relevance in resolving the historical injustices, discrimination, and social exclusion experienced by these oppressed people have been highlighted in this essay.

The monitoring, investigative, and advocacy duties of the NCSC have been essential in ensuring that Dalit protection laws are followed and that those responsible for crimes against them are brought to justice. Additionally, policies and activities aiming at closing the socioeconomic divide that has existed for generations have been affected by the commission's proposals for socioeconomic development.

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CHAPTER 6

EXPLORING THE DISTINCTION BETWEEN CLASSIC AND SOCIAL RIGHTS

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ABSTRACT:

This paper explores the distinction between classic rights and social rights, shedding light on the evolving concept of human rights within the framework of modern societies. Classic rights, often associated with civil and political liberties, emphasize individual freedoms such as freedom of speech and the right to a fair trial. In contrast, social rights focus on the collective responsibility of governments to ensure economic and social well-being, encompassing access to education, healthcare, and social security. Through a comparative analysis, this study examines the historical development, interplay, and challenges associated with these two categories of rights, highlighting their critical role in shaping contemporary notions of justice and equity.The abstract outlines the historical roots of classic and social rights, tracing their origins in various political and philosophical traditions. It discusses the tension between these rights, as classic rights prioritize individual autonomy while social rights emphasize collective welfare. The paper also addresses the ongoing debate regarding the universality and enforceability of social rights, particularly in an era of globalization and economic disparity.

KEYWORDS:

Economic Security, Education, Employment, Health Care, Human Dignity.

1. INTRODUCTION

'Classic' and'social' rights are two categories that are sometimes utilized. "Classic" rights are often considered as necessitating the state's non-intervention whereas "social" rights are seen as necessitating the state's active engagement. In other words, social rights require the state to give certain assurances, while traditional rights require it to abstain from doing specific acts. Lawyers often compare social rights to a responsibility to supply the means, whereas traditional rights are described as a duty to attain a certain outcome. But as international law has developed, it has been hard to distinguish between "classic" and "social" rights. Traditional rights like civil and political rights sometimes need significant governmental commitment. These rights must be respected by the state, but it also has a duty to ensure that individuals may actually exercise them.

As a result, the right to a fair trial, for instance, calls for administrative assistance in addition to qualified judges, prosecutors, attorneys, and police officers. Another example is the expensive process of organizing elections.On the other hand, the majority of so-called "social" rights include provisions requiring the state to refrain from interfering with the enjoyment of the right by the person. The right to housing implies the freedom not to be a victim of forced eviction; the right to work includes the individual's right to choose his or her own work and also requires the state to refrain from measures that would increase unemployment; the right to education implies the freedom to establish one's own educational institution; and the right to food includes the right for everyone to procure their own food supply without interference, as noted by several commentators. In conclusion, the distinction

between "classic" and "social" rights does not accurately represent the nature of the responsibilities imposed by each set of rights[1], [2].

Economic, social, cultural, and civil rights

The first eighteen articles of the UDHR, which virtually all also serve as enforceable treaty rules in the ICCPR, are commonly referred to as the "civil rights" provisions. From this group, a further set of "physical integrity rights" has been identified, which protect against physical violence against the person, torture and inhuman treatment, arbitrary arrest, detention, exile, slavery and servitude, interference with one's privacy and right to own property, restriction of one's freedom of movement, and the freedom of thought, conscience, and religion. These rights also concern the right to life, liberty, and security of the person. The distinction between "basic rights" and "physical integrity rights" is that the former contains economic and social rights while the latter excludes rights like ownership and privacy protection.The right to equal treatment and protection under the law definitely counts as a civil right, even if it isn't strictly speaking an integrity right. Additionally, the realization of this right is crucial for the realization of economic, social, and cultural rights.The phrase "due process rights" is used to refer to a different set of civil rights. These concern, among other things, the 'presumption of innocence', the ne bis in idem principle, and the access to legal help[3], [4].

Political freedom

Political rights are generally those that are outlined in Articles 19 through 21 of the UDHR and likewise codified in the ICCPR. They include the freedoms of speech, association, and assembly as well as the participation in national governance and the right to vote and run for office in legitimate, regular elections conducted in private.

Social and economic rights

The UDHR lists the economic and social rights in Articles 22 to 26, while the ICESCR expands on them and lays out the rights as obligatory treaty standards. The prerequisites for success and wellbeing are provided by these rights. Economic rights include things like the right to own property, the freedom to select or accept employment, the right to a just salary, the ability to choose appropriate hours of labor, and the right to join a union. Social rights are those that are required for a reasonable level of life, such as the rights to education, food, housing, and social care.

Ethnic Rights

The UDHR lists cultural rights in Articles 27 and 28, including the freedom to engage in community culture, the opportunity to benefit from scientific progress, and the protection of one's material and moral interests as a result of any scientific, literary, or artistic work that they have contributed to. The purported division between economic, social, and cultural rights and civil and political rights It has long been claimed that there are significant distinctions between civil and political rights and economic, social, and cultural rights. These two types of rights have been conceptualized as two distinct ideas, and the distinctions between them have been described as a dichotomy. This point of view holds that civil and political rights are articulated in very specific terms and impose only negative responsibilities that may be put into practice right away since they don't need any resources to be put into place.

Economic, social, and cultural rights, on the other hand, are seen to be represented in ambiguous words, imposing only positive responsibilities according to the availability of

resources and entailing a gradual realization.Due to these apparent distinctions, it has been asserted that economic, social, and cultural rights are not justiciable but civil and political rights are. In other words, this perspective contends that economic, social, and cultural rights are 'by their nature' unjustifiable and that only breaches of civil and political rights may be decided by courts or other such authorities.The importance of the legal legitimacy and application of economic, social, and cultural rights has grown as they have been reexamined throughout time. We have seen the emergence over the last ten years of a sizable and expanding corpus of domestic court case law pertaining to economic, social, and cultural rights. This case-law shows a possible role for innovative and considerate judgments of judicial and quasi-judicial authorities with regard to these rights at the national and international levels[5], [6].

2. DISCUSSION

The universality and interdependence of human rights have been discussed at length in several international forums. All human rights are universal, indivisible, interdependent, and linked, as stated in the 1993 Vienna Declaration and Programme of Action. The European Union and its member states have also made it abundantly clear on numerous occasions that they subscribe to the belief that both categories of human rights are of equal importance, in the sense that an existence worthy of human dignity is only possible if both civil and political rights and economic, social, and cultural rights are enshrined. They said in their Declaration of July 21, 1986, that "the promotion of economic, social, and cultural rights, as well as civil and political rights, is of paramount importance for the full realization of human dignity and for the achievement of the legitimate aspirations of every individual.

A clear separation between civil and political rights and economic, social, and cultural rights is inaccurate, according to the so-called Limburg Principles on the Implementation of the ICESCR. These guidelines were developed in 1986 by a panel of impartial specialists, and the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights were released in 1997. Together, these texts provide a comprehensive explanation of the ICESCR's state party duties. The 1990 General Comment 3 of the UN Committee on Economic, Social, and Cultural Rights on the nature of States Parties' Obligations in Relation to the ICESCR may be regarded to have the same effect.The options for petitioning an international organization with regard to infringement of economic, social, and cultural rights are still quite restricted, despite ongoing international statements on the equality and interdependence of these rights. The international community has been debating whether to adopt an Optional Protocol to the ICESCR that would establish a system of individual and collective complaints for many years, and the Committee on Economic, Social, and Cultural Rights has dedicated a lot of time and effort to discussing a draft Optional Protocol.

States have generally formally backed the establishment of an optional protocol. The Vienna Declaration and Programme of Action "encourage the Commission on Human Rights to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights" in collaboration with the Committee on Economic, Social and Cultural Rights. The UN Commission on Human Rights reaffirmed this promise and backed the Committee's efforts to establish an optional protocol that would allow people or organizations to report instances of the Covenant's non-compliance. The mandate of the "Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights" was extended for another two years during the 60th session of the UN Commission on Human Rights in order to "consider options regarding the elaboration of an Optional Protocol to the ICESCR." The first is that economic, social, and cultural rights now have a lower status and level of protection than civil and political rights.

Second, an individual complaints system will clarify the definition and boundaries of economic, social, and cultural rights, assisting efforts to uphold and ensure their enjoyment. Thirdly, the possibility of an international "remedy" may encourage people and organizations to frame some of their demands for economic and social justice in terms of rights. Last but not least, the likelihood of a negative "finding" by international organizations would raise the importance of economic, social, and cultural rights in terms of political concerns of governments, which these rights now mainly lack.The concepts of the indivisibility and interdependence of all human rights would mostly remain hypothetical without the passage of an Optional Protocol. Such rights like the right to life and the inviolability of the person are considered to be among the fundamental rights. The UN has established substantial standards that, in particular since the 1960s, have been outlined in various conventions, declarations, and resolutions. These standards bring existing recognized rights and policy issues that have an impact on human development into the realm of human rights. There is a need to establish a distinct group within the wide category of human rights due to concern that a broad definition of human rights may cause the concept of "violation of human rights" to lose some of its relevance. Human rights are increasingly referred to be "elementary," "essential," "core," and "fundamental[7], [8]."

A different strategy is to identify a handful of "basic rights" that must have absolute precedence in national and international policy. All of the rights that are related to people's basic material and non-material requirements fall under this category. No human being can live a decent life without these things. Basic rights include the right to life, the right to a reasonable degree of security, the inviolability of the person, the freedom from slavery and servitude, the freedom from torture, the freedom from illegally taking away one's freedom, the freedom from discrimination, and the freedom from other actions that violate one's dignity as a human. They also include the right to proper nourishment, clothes, housing, and medical treatment, as well as other necessities important to bodily and mental health. They also encompass freedom of opinion, conscience, and religion.The concept of "participation rights" should also be mentioned. These rights include things like the ability to vote and engage in cultural activities. These participation rights are often regarded as fundamental rights since they are necessary prerequisites for the defense of all basic human rights.

Different Classification

Freedoms

A dignified human existence's prerequisites are often characterized in terms of freedoms. These prerequisites were summed up by American President Franklin D. Roosevelt in his renowned "Four Freedoms Speech" to the US Congress on January 26, 1941.

1. Speech and expression rights;
2. Freedom of thought;
3. Being free from need; and
4. Liberation from fear.

Roosevelt suggested that access to the basic essentials of life as well as protection against tyranny and arbitrariness are necessary for a dignified human existence[9], [10].

Citizens' rights

Particularly in the United States, where the American Civil Liberties Union has been active since the 1920s, the idea of "civil liberties" is well-known. Civil liberties primarily refer to those human rights outlined in the US Constitution, such as the freedom of religion, the

freedom of the press, the freedom of expression, the freedom of association and assembly, the protection against invasions of one's privacy, the prohibition of torture, the right to a fair trial, and worker rights. The divide between civil and political rights is not reflected in this categorization.

Both Private and Public Rights

Human rights are primarily intended to protect and advance the individual, although several of these rights are also practiced by groups of people. This includes the right to create or join a union, the freedom of organization and assembly, and the freedom of religion. When human rights are directly tied to belonging to a particular group, like the right of members of ethnic and cultural minority to retain their own language and culture, the collective aspect is much more obvious. One must distinguish between two categories of rights, which are often referred to as rights of a collective and individual rights enjoyed in collaboration with others. The right to self-determination, which is seen as belonging to peoples rather than to individuals, is the best example of a collective human right. The notion that the right to self-determination is an essential prerequisite for an individual's growth underlies the recognition of it as a human right. It is widely acknowledged that collective rights cannot violate internationally recognized individual freedoms like the right to life and the prohibition against torture. Rights of the first, second, and third generations Karel Vasak originally suggested dividing human rights into three generations at the International Institute of Human Rights in Strasbourg. The French Revolution's Liberté, Égalité, and Fraternité are upheld by his division.

First generation rights primarily pertain to civil and political rights and are concerned with liberty. Economic, social, and cultural rights are included in the second generation of rights, which are tied to equality. Third-generation rights, often known as "solidarity rights," comprise collective and group rights such as the right to peace, the right to development, and the right to a healthy environment. Aside from the right to self-determination, which has a longer history, the right to development is the only third generation right that has received formal human rights status to far. The Vienna Declaration affirms both the communal and individual rights to development, with people being the main subjects of development. The High Commissioner for Human Rights has recently focused a lot of emphasis on the right to growth. The right to development is officially recognized by the EU and its member states as a component of the human rights concept.The division of rights into "generations" has been criticized for not being historically accurate and for drawing a clear line between all human rights, despite the fact that it incorporates communal and collective rights, displacing the individualist moral theory on which human rights are based. In fact, the Teheran Proclamation and the Vienna Declaration and Programme of Action, which affirm that all rights are indivisible, interdependent, and linked, are at contrast with the idea of generations of rights.

The universality concept has proven crucial to how human rights legislation is interpreted during the last fifty years. Prior to the Second World War, the recognition and defense of basic rights had already been somewhat codified, but mostly in national law and particularly in national constitutions. Politicians and members of civil society did not, however, come to the realization that national programs for the preservation of human rights were insufficient until after World War II. Since that time, other regional and international accords have included human rights provisions.Human rights were formally acknowledged as a universal ideal on October 24, 1945, when the UN Charter entered into effect. The Preamble and Articles 55 and 56 of the Charter highlight human rights compliance as a value that all governments must uphold. The UDHR was adopted in 1948, and the ICESCR, ICCPR, and

its First Optional Protocol followed in 1966.More than 30 rights are outlined in the UDHR. It sees the defense of these rights as a goal that should be finally attained. A number of nations and academics contend that the UDHR contains human rights that have jus cogens characteristics. Its universality is shown by the fact that in 1948 it was drafted and approved by delegates from nations like China, the Soviet Union, Chile, and Lebanon in addition to Western governments. Additionally, it passed with no protests, only eight abstentions, and no votes against it.

As mentioned above, an increasing number of nations gained independence and joined the UN throughout the 1950s and 1960s. By doing this, they supported the values and principles outlined in the UDHR. The 1968 Teheran Proclamation emphasized this dedication. 85 states, including more than 60 non-Western Group nations, voted to accept the Proclamation. The Universal Declaration of Human Rights was declared to be "a common understanding of the peoples of the world regarding the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.The Second World Conference on Human Rights' outcomes, the Vienna Declaration and Programme of Action, reaffirmed and emphasized the significance of the UDHR. In the words of the Declaration itself, it was said that the UDHR "constitutes a common standard of achievement for all peoples and all nations."

Intense disagreement has been and continues to exist on the universality of human rights, particularly before, during, and after the 1993 World Conference on Human Rights. The Vienna Declaration asserts that the existence of universal human rights is "beyond question." Additionally, it states that "all human rights are universal," but it also notes the importance of national and regional particularities as well as distinct historical, cultural, and religious backgrounds. However, the Vienna Agreement notes that this national "margin of appreciation" does not absolve governments of their responsibility to advance and defend all human rights, "regardless of their political, economic and cultural systems.The growing number of ratifications of international human rights agreements is important when thinking about the universality of human rights.

Human rights and meddling in private matters

When third nations publicly denounced human rights crimes in the past, the relevant authorities would respond by making allusions to "unacceptable interference in internal affairs." When it comes to human rights, this argument has fallen short in more recent years. In terms of how the international community views its obligation to uphold and preserve human rights, the Second World War marked a turning point. The traditional notion of state sovereignty with regard to one's citizens has weakened over time. The United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, according to the UN Charter, which also states that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Sixth and seventh principles of the Helsinki Final Act of the Conference on Security and Co-operation in Europe of 1975 and the Vienna World Conference on Human Rights of 1993 both reiterated these pledges. Thus, the conventional understanding of the concept of national sovereignty has been constrained in two very important and connected ways. First off, the world community increasingly views a state's treatment of its citizens as a real issue. Second, there are now higher international standards that may be used to evaluate domestic legislation, the behavior of sovereign nations inside their own borders, and the exercise of their internal jurisdiction. These standards were developed by consensus.

Human rights, as outlined in the UDHR, have therefore become a subject of international concern and do not lie within the exclusive authority of states, hence whether a state has ratified the agreements outlining international human rights standards is significant but not the sole deciding criterion. A legitimate interest of the international community is the promotion and preservation of all human rights, as expressed in the 1993 Vienna Declaration and Programme of Action. In cases of abuses of human rights, there is a right to intervene. In this sense, interference may be described as any kind of international participation in the internal affairs of other nations, with the exception of interference involving the use of force. The difference between interference and intervention is important because it prevents nations from using military force to respond to breaches of human rights only because the principle of non-interference does not apply to such issues. This may be a breach of the UN Charter's ban on the use of force. According to some human rights experts, the UN Security Council should decide that a particular human rights situation threatens global peace and security and, as a result, authorize military action for humanitarian reasons to be carried out under the UN's auspices.A helpful description of the duties imposed by human rights treaties emerged in the early 1980s, blurring the distinction between civil and political rights and economic, social, and cultural rights. Henry Shue specifically argued in 1980 that there are three sorts of correlative responsibilities for each fundamental right: "to avoid depriving," "to protect from deprivation," and "to aid the deprived."

The "tripartite typology" has changed since Shue's suggestion was published, and researchers have created typologies with more than three levels. Although there is disagreement on the exact meaning of the various levels, the "tripartite typology" put forward by Shue is now more succinctly recognized as the duties "to respect," "to protect," and "to fulfill." This degree of commitment compels the state to abstain from taking any action that would prevent people from enjoying their rights or from being able to exercise their rights on their own.

Obligations to safeguard

The state is obligated to stop infringements of human rights by outside parties. It is generally accepted that governments have a fundamental responsibility to safeguard their citizens by preventing the infliction of irreparable damage. This necessitates governments to: a) prohibit rights violations by any person or non-state actor; b) avoid and remove third-party incentives to violate rights; and c) offer access to legal remedies where rights breaches have already happened in order to stop new infringements. Obligations to fulfill This level of responsibility calls for the state to take action to guarantee that people living under its control have the opportunity to satisfy their fundamental requirements, which are acknowledged in human rights documents but cannot be met via individual effort. The responsibility to fulfill also emerges in regard to civil and political rights, even if this is the primary governmental obligation in relation to economic, social, and cultural rights. Enforcing laws such as those against torture, the right to a fair trial, the right to free and fair elections, or the right to legal representation clearly comes at a high financial cost.

3. CONCLUSION

In conclusion, the report acknowledges that there is a dynamic interaction between traditional and social rights, which changes among nations and settings rather than being a fixed contradiction. In order to fully realize a fair and equitable society, it is emphasized that both types of rights are crucial parts of a complete human rights framework. In order to overcome structural inequities and ensure everyone's well-being, the report emphasizes the necessity for a well-balanced strategy that respects individual liberty while also acknowledging the significance of social rights. A key component in forming the conversation around human

rights has been the contrast between traditional and social rights, which highlights how political and cultural ideas have changed through time. This essay has examined the emergence, interaction, and difficulties of these two types of rights historically, highlighting their significance for modern concepts of justice and equality.

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CHAPTER 7

EXPLORING THE DIVERSE SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW

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ABSTRACT:

This paper explores the diverse sources of international human rights law, examining the foundations and principles that underpin this vital field of global governance. International human rights law serves as a beacon of hope, advocating for the inherent dignity and inalienable rights of every individual, regardless of their nationality, race, religion, or other characteristics. Through a comprehensive analysis, this study unravels the various sources of international human rights law, including treaties, customary international law, general principles of law, and soft law instruments. It elucidates the evolution of these sources and their impact on shaping the global human rights landscape.The abstract introduces the notion that international human rights law is rooted in a complex web of sources that have evolved over time. It highlights the significance of international treaties, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, in setting the standard for human rights protection. The paper also underscores the role of customary international law in solidifying human rights norms and the influence of general principles of law in guiding human rights jurisprudence. Additionally, it acknowledges the role of soft law instruments and non-binding resolutions in fostering international cooperation and advocacy for human rights.

KEYWORDS:

Customary International Law, Discrimination, Enforcement Mechanisms, Human Rights Treaties, International Human Rights Norms, Non-Discrimination.

1. INTRODUCTION

States and peoples have had diplomatic contacts with one another since the dawn of time. Traditions regarding the management of these partnerships have evolved throughout time. These are the customs that constitute contemporary "international law." In addition to addressing a broad variety of topics including security, diplomatic relations, commerce, culture, and human rights, international law also varies significantly from domestic legal systems in a number of significant ways. There is neither a single legislative body nor a single organization responsible for upholding international law. As a result, international law is essentially based on self-enforcement by governments and can only be formed with their cooperation. There is no supranational entity that can enforce laws in circumstances of non-compliance; instead, other nations must act individually or collectively to do so.This consent, which serves as the foundation for international law, may be represented in a variety of ways. An express treaty that imposes responsibilities on the nations parties is the most evident kind. Such "treaty law" makes up a significant portion of contemporary international law.

Other than treaties, papers and agreements that may or may not be legally binding serve as standards for state behavior. Consent may also be inferred from the well-established and recurrent behavior of states in their interactions with one another. There are several sources of international law, and governments adhere to them to varying degrees. Article 38 of the International Court of Justice Statute lays forth the list of sources of international law that is

generally recognized. These include: a) General or specific international conventions; b) International custom as proof of customary law; c) The universal principles of law acknowledged by civilized nations; and d) Additional methods for establishing legal principles, such as judicial rulings and the teachings of the most experienced publicists.Conventions on a global scale international treaties are agreements made between nations. They impose reciprocal responsibilities on the nations that are parties to any given treaty and are legally enforceable. Human rights treaties are unique in that they set responsibilities on nations about how they should treat all people under their control[1], [2].

Although there is no hierarchy among the sources of international law, treaties do have considerable sway. Today, more than 40 significant international treaties have been established to preserve human rights. International human rights treaties go by many names, such as "covenant," "convention," and "protocol," but they all have one thing in common: the express consent of the nation's parties to be bound by its provisions[3], [4].Both on a global scale and via the sponsorship of regional organizations like the Council of Europe, the Organization of American States, and the African Union, human rights treaties have been enacted. These groups have made significant contributions to the formulation of a thorough and coherent corpus of human rights legislation.The League of Nations Covenant, which, among other things, sparked the founding of the International Labour Organization, already gave voice to human rights. A proposal to approve a "Declaration on the Essential Rights of Man" was put out during the San Francisco Conference in 1945, which was convened to design the United Nations Charter, but it was not investigated since it needed more thorough examination than was feasible at the time. But the UN Charter makes it plain that it is its goal to "promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language, or religion." Following this, the notion of establishing an "international bill of rights" was conceived, which eventually led to the 1948 ratification of the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights (UDHR), while not a treaty, was approved by the United Nations General Assembly and is the first comprehensive human rights document to be accepted by the entire community. The UNGA urged the UN Commission on Human Rights to draft a legally enforceable human rights convention as soon as possible on the same day it approved the Universal Declaration. The UNGA received two draft treaties in 1954 for review after attempts to reach consensus on a single document were impeded by profound disparities in economic and social ideas. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights were both ratified twelve years later, in 1966, along with the First Optional Protocol to the ICCPR, which provided a process for individual complaints. In 1976, the Optional Protocol and the Covenants both came into effect. The elimination of the death penalty is addressed in a Second Optional Protocol to the ICCPR, which was approved in 1989 and came into effect in 1991.

The Universal Declaration of Human Rights, the ICESCR, the ICCPR, and its two Optional Protocols make up the "International Bill of Human Rights." Numerous conventions and national constitutions are based on the International Bill of Rights.Important international human rights instruments include the ICCPR and the ICESCR. They both have a Preamble and Article 1, which defines the right to self-determination. In the ICCPR, civil and political rights are the most prevalent. The Human Rights Committee is in charge of oversight. The Committee offers oversight via evaluation of state parties' reports and determinations regarding interstate complaints. As long as the state in question is a signatory to the First Optional Protocol, individuals may also submit claims against governments to the Committee

claiming infringement of their rights under the Covenant. A total of 152 governments had ratified the Covenant by July 2004; 104 had ratified the First Optional Protocol, and 53 had ratified the Second Optional Protocol.Similar to the 'social' section of the UDHR, the ICESCR is a list of economic, social, and cultural rights. States that have ratified the Covenant are required to report, and the Committee on Economic, Social, and Cultural Rights has been charged with reviewing such reports on behalf of the UN Economic and Social Council. There were 149 states that were parties to the Covenant as of July 2004[5], [6].

2. DISCUSSION

In order to create human rights duties, the UN Charter supports the adoption of regional instruments, many of which have been significant for the development of international human rights law. The European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Framework Convention on National Minorities were all adopted by the Council of Europe after the 1950 adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms.In 1969, the Organization of American States oversaw the adoption of the American Convention on Human Rights. Two protocols have been added to this Convention: the 1990 Protocol to Abolish the Death Penalty and the 1988 Protocol of San Salvador on Economic, Social, and Cultural Rights. The Convention to Prevent and Punish Torture, the Convention on the Forced Disappearances of Persons, and the Convention on the Prevention, Punishment, and Eradication of Violence against Women are among the other Inter-American Conventions.The African Charter on Human and Peoples' Rights was enacted in 1981 by the Organization of African Unity, which is now known as the African Union. The Additional Protocol on the Establishment of the African Court on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa have both been accepted as protocols to the Charter. Other African legal documents include the African Charter on the Rights and Welfare of Children and the Convention Governing the Specific Aspects of Refugee Problems in Africa[7], [8].

International Practice

International human rights legislation heavily relies on customary international law. 'General practice acknowledged as law' is a term used in the International Court of Justice Statute. The "general practice" must reflect widespread agreement in terms of substance and application, resulting from a perception that the practice is required, in order to become international customary law. All states must abide by customary law, regardless of whether they have signed any applicable treaties. One of the key characteristics of customary international law is its potential to give rise to universal jurisdiction or application, allowing any national court to hear extraterritorial claims made under international law under certain situations. Jus cogens, also known as peremptory norms of general international law, is another category of customary international law. These standards are recognized and acknowledged by the whole international community of states as being norms from which no deviation is permissible. Any pact that clashes with a peremptory rule is invalid, according to the Vienna Convention on the Law of Treaties. Many academics contend that some principles outlined in the Universal Declaration of Human Rights have been incorporated into customary international law as a consequence of later practice, making them mandatory for all nations. It may be difficult to distinguish between conceptions of customary law, treaty law, and basic principles of law in the field of human rights law[9], [10].

The rights that may be taken as belonging to this area of international law that is obligatory on all nations, regardless of whether they have signed relevant agreements, and to which no reservations are permitted, have been summed up by the Human Rights Committee in its

General Comment 24. The state may not reserve the right to engage in slavery, torture, cruel, inhuman, or degrading treatment or punishment, to arbitrarily take away someone's life, to arbitrarily arrest and detain someone, to deny someone their right to freedom of thought, conscience, and religion, to execute pregnant women and children, to allow the promotion of national, racial, or religious hatred, or to deny someone the right to wed. moreover, the right to a fair trial.The Committee emphasizes that there are a number of human rights that de jure is beyond the scope of the discussion on the universality of human rights, even if this list is debatable and may be expanded to include more rights not related to civil and political rights.

General Legal Concepts

General or guiding principles are employed in the implementation of both domestic and foreign law. They are described as "logical propositions resulting from judicial reasoning on the basis of existing pieces of international law" in the context of international law. General legal concepts play a significant role in human rights case law at the international level. The concept of proportionality, which is crucial for human rights supervisory bodies to consider when determining whether interference with a human right may be acceptable, is a clear example. Why do we employ generic principles? No piece of law is equipped to address all issues or every scenario that could occur. Therefore, there is a need for laws or principles that provide the executive and judicial branches and decision-makers the ability to make decisions about the problems at hand. General legal principles serve two crucial functions. On the one hand, they provide judges, in particular, direction when making judgments in specific situations. On the other hand, they place restrictions on the discretionary authority of judges and other members of the executive when making decisions in particular circumstances.Legal judgments and the teachings of the most competent publicists are considered "secondary means for the determination of rules of law," in accordance with Article 38 of the Statute of the International Court of Justice. As a result, they cannot be considered official sources strictly speaking, although they are nonetheless recognized as indicators of the status of the law. Article 38 of the Statute of the International Court refers to judgments of national courts pertaining to human rights as secondary sources of law, not only international rulings.

Scholarly papers aid in the creation and examination of human rights legislation. The influence is less immediate when compared to official standards established by international organizations. However, influential contributions have come from academics and professionals working in human rights fora, such as the UN Sub-Commission on the Promotion and Protection of Human Rights, as well as from well-known NGOs, like Amnesty International and the International Commission of Jurists.

Other standard-setting contributions

Despite not being inherently binding on states parties, certain documents or judgments made by political bodies of international organizations and human rights oversight agencies nonetheless have a significant legal impact. Human rights-related decisions are made by a number of international bodies, which strengthens the body of international human rights norms. These non-binding human rights instruments are known as "soft law," and they may influence how nations conduct themselves as well as build and reflect consensus among states and experts on how to interpret certain criteria.

More than 100 resolutions and judgments pertaining to human rights are adopted annually by the UNGA and UN Commission on Human Rights. Such resolutions are also adopted by organizations like the ILO and the Council of Europe's different political institutions. Some of these resolutions, also known as declarations, provide precise requirements for certain human rights that go beyond those set down in existing treaties. The UNGA's 1985 adoption

of the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live and the UN Commission on Human Rights' adoption of the Guiding Principles on Internal Displacement in 1999 are two notable instances. Numerous resolutions passed by the UNGA eventually sparked discussions that resulted in treaty norms. Not all resolutions and decisions try to establish standards; instead, many deal with specific circumstances where competing political interests are more prominent. For instance, decisions are made on the nomination of individuals to serve on UN commissions.

Political Organ Decisions

Political decisions, such as those concerning the Organization for Security and Cooperation in Europe's (OSCE) publications, have a specific significance and may influence the development of human rights standards. The so-called Human Dimension of European Cooperation has received a great deal of attention from the OSCE ever since 1975. OSCE papers often are created in a little amount of time and do not purport to be legally binding. As a result, they have the advantages of flexibility and applicability to recent events that have an impact on states. For instance, the Copenhagen Document of the CSCE Conference on the Human Dimension in 1990 made the most use of the developments that had occurred in Europe after the collapse of the Berlin Wall in 1989. The sections on national minorities in this text served as benchmarks for minorities' protection and as principles for following bilateral treaties. Although this type of document reflects the dynamic nature of international human rights law, some experts are concerned that the political nature of these documents may cause confusion because newer texts may conflict with existing instruments or overly broaden the focus on human rights by including too many related issues.

Regulatory Body Decisions

To ensure that nations are adhering to international human rights norms, several supervision institutions for human rights have been formed. These regulatory organizations are often referred to as "treaty bodies" in the context of the UN. They analyze international treaties, provide advice, and, sometimes, reach judgments in disputes that are presented before them. Despite not necessarily having legal force, these judgments, assessments, and suggestions have a tremendous influence on international human rights legislation.Treaty organizations often draft these so-called General Comments or Recommendations in this regard, expanding on the different articles and clauses of their particular human rights treaties. These overarching remarks or suggestions are meant to help the states parties uphold their duties. For their work in this area, the Human Rights Committee and the Committee on Economic, Social, and Cultural Rights are well-known. These general remarks/recommendations seek to offer states parties with authoritative advice by taking into account the changes within each Committee about the interpretation of certain clauses. As a result, they significantly affect how states parties behave.

Fundamental Ideas Related to Human Rights Law

States are obligated to uphold the provisions of a human rights treaty once they sign it. Furthermore, it is crucial to consider the presence of general principles that are ingrained in international human rights law and that direct the execution of human rights treaties. It is important to make a distinction between a general concept and a human right while attempting to describe it. According to the UN Commission on Human Rights' definition of a human right, a right must satisfy the following criteria: a) be in accordance with the body of existing international human rights law; b) be of fundamental character and derive from the inherent dignity and worth of the human person; c) be sufficiently specific to give rise to

identifiable and practicable rights and obligations; and d) provide, as necessary, realistic and effective implementation mechanisms.

Although basic concepts do not constitute human rights, there is some overlap since certain general ideas, such as the non-discrimination and non-bis in idem principles, have progressively transformed into real human rights by becoming sufficiently specific and meeting the aforementioned requirements. There is no agreement on general principles, but it is suggested that in order to be considered such, a principle must be: a) To some extent, universally or in a particular jurisdiction, generally accepted; b) Different from human rights in that they are not sufficiently precise in law to give rise to identifiable and practicable rights and obligations; and c) Considered either to limit or to guide a state when examining or evaluating human rights.

3. CONCLUSION

In conclusion, the study focuses on how crucial it is to acknowledge the diversity of sources in international human rights legislation. It emphasizes how this legal system is flexible and inclusive, relying on a range of sources to defend the rights and dignity of people all around the globe. The study asserts in its conclusion that ongoing initiatives to strengthen and broaden these sources are crucial to promoting the cause of human rights on a worldwide basis. The cornerstone of global human rights protection is made up of dynamic and ever-evolving sources of international human rights law.

This essay has examined the many roots and tenets that support this crucial area of international law, highlighting its basic function in defending the intrinsic worth and rights of every person, regardless of background.As such, basic principles serve as the foundation of law and aid in the interpretation of both international law in general and human rights legislation in particular. The principles both provide judges criteria for making judgments in specific circumstances and place restrictions on the judges' and the executive's discretion in making such decisions. General principles thus play a significant role in the implementation of human rights.

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CHAPTER 8

PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION IN THE ENJOYMENT OF HUMAN RIGHTS

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ABSTRACT:

The principle of equality and non-discrimination is a cornerstone of international human rights law, serving as a beacon of hope for a just and equitable world. This paper explores the profound significance of this principle in the enjoyment of human rights, elucidating its foundations, evolution, and contemporary relevance. The principle underscores that all individuals, regardless of their race, ethnicity, gender, religion, or other characteristics, are entitled to the same rights and protections. Through an in-depth analysis, this study examines the various dimensions of equality and non-discrimination, including substantive and procedural aspects, and their impact on shaping the global human rights landscape.The abstract introduces the principle of equality and non-discrimination as a fundamental and universal concept deeply embedded in human rights discourse. It emphasizes that this principle transcends national borders and is enshrined in key international human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

KEYWORDS:

Equality, Human Dignity, Inclusion, Intersectionality, Legal Protection, Marginalized Groups.

1. INTRODUCTION

A fundamental component of the ideas of democracy and human rights is the rule of law. However, there is no universal agreement on what it means. varied cultures in Continental Europe and the Anglo-Saxon globe give the phrase somewhat varied meanings. The notion isn't usually clearly specified in official publications. On the other hand, there is broad agreement that the rule of law is a basic value. According to the concept of the rule of law, rights must be maintained by the law, regardless of the wishes of the ruler. Individual liberties and rights must be safeguarded against any abuse of discretion on the part of governmental authorities. The Preamble to the United Nations Charter outlines the "rule of law" principle and states that the organization's goals are to "save succeeding generations from the scourge of war," "reaffirm faith in fundamental human rights," and "establish conditions under which justice and respect for the obligations arising from international law can be maintained[1], [2].

The following definition has been offered by the International Commission of Jurists. "The rule of law" refers to more than just the formal application of legal procedures; it also refers to the rule of justice and the protection of all citizens from excessive government authority. In conclusion, the rule of law implies that a government's use of its authority must be subject to the law and that its subjects or citizens must not be subject to the arbitrary demands of their rulers.Since the rule of law is an ancient idea, we must go back to medieval England to comprehend how it came to be. Harold II, the last Anglo-Saxon king, was vanquished by William the Conqueror, who thereafter created a centralized government. The absolute dominance of the central government across the nation and the rule or supremacy of the law were two characteristics of the political institutions in England at the period. The authority of

the King represented the centralized government's dominance. All laws came from him, and he also had the authority to administer justice and exercise jurisdiction. However, this did not imply that the King was above the law; throughout the Middle Ages, it was commonly believed in England and other nations that the world was ruled by laws that either sprang from what was seen as divine authority or from what was generally accepted to be just. The King was thus bound by the law since it was the law that had originally established him as King. The rule of law originally meant something similar[3], [4].

Attempts to establish absolute control failed in part due to the English people's perception that there was a "higher" law in place, the early creation of parliament, and the nobility's battle to protect its historical rights from the King. The stronger common law courts and parliament were able to sustain the old order of justice while also giving it a purpose that reflected the changes in society and the values of the populace. This change signaled the commencement of the rule of law, which was compatible with the parliamentary supremacy theory. The concepts of l'Etat de Droit were evolved on the European continent, where a comparable evolution occurred under the reign of the Frankish Kingdom. The underlying idea was that the government could only pass a law or binding rule based on what it deemed to be reasonable and right. The notion meant, in a substantive sense, that the norms and actions of the government must be focused on the realization of justice. This notion required not only legislation that was based on the greatest possible balance of interests, but also the acknowledgement of liberties and the presence of an independent court capable of limiting the authority of the executive branch[5], [6].

Concept Dynamic

Since its inception in the early Middle Ages, the definition of the rule of law has undergone a process of development that closely parallels changing perceptions of the functions and goals of a national government. However, it is a dynamic idea in more ways than one. It stands for a variety of concepts that must be implemented and evolved on a case-by-case basis rather than an abstract, immutable set of clear laws. Therefore, it is best to think of the rule of law as a comprehensive collection of laws that all subjects and governments must abide by. These standards' precise substance is influenced by a number of variables, such as popular opinion, political awareness, and the general sense of fairness.The fact that the rule of law is dynamic does not preclude the development of general principles from it. On the other hand, it is somewhat conceivable to pinpoint the laws and values that, at a certain period, flow from the rule of law. In essence, certain concepts have always been a component of the rule of law. These are universal truths that have withstood the test of time.

In general, the perception of the rule of law has steadily changed from being a source of individual rights to a method of defense against excessive political authority. Additional laws and guidelines drawn from the rule of law include No unbridled authority. The separation of powers is a part of this idea. It applies to all interactions among the legislative, executive, and judicial branches as well. Discretionary power is impossible since the state controls many aspects of national life. However, this does not imply pure arbitrary power, which is the kind of authority used by individuals who are under no one's supervision or accountability. Lower state entities must be given authority and power in a regulated manner, and how they exercise that authority must be monitored. A delegate with "carte blanche" obviously violates the law.

impartiality of the justice system. The aforementioned idea is strongly related to the judiciary's independence. The independence of the judiciary means that the legal profession is also independent and that the judiciary controls both the law and government. The greatest way to ensure that fundamental rights and liberties are upheld is in a society where the legal

system is free from outside influence and pressure, and where everyone has the right to a fair trial before an impartial, competent, and independent tribunal.Now, a fully free society is seen to be represented by the rule of law. Although its exact definition varies from nation to nation and from one century to another, it is always associated with personal freedom. The opposing ideas of individual liberty and public order are delicately balanced by the rule of law. The difficulty of balancing public interest obligations with human rights is one that every state must overcome. Only independent courts with the authority to preserve the delicate balance between the citizen and the state can achieve this.

The state, via its public authority, its officials, and its agents, is the most formidable force in every society and, as a result, the biggest threat to respect for human rights. Any democratic society requires laws to safeguard citizens' rights and liberties, whether such rules are institutionalized as common law or are spelled out in constitutions and treaties. Laws that allow people to seek redress for any infringement should exist, and there should be a judicial system that guarantees that redress is taken, particularly against the state.In addition to those already included in international treaties (ECHR), additional criteria have been created in recent years to improve the role of the rule of law. The promotion of these norms has mostly been carried out through the International Commission of Jurists. The UN Basic Principles on the Independence of the Judiciary, the UN Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, and the UN Basic Principles on the Role of Lawyers are three key criteria that fall under the UN's umbrella.

The Copenhagen Meeting of the Conference on the Human Dimension of the CSCE paper is a significant one on the rule of law within the OSCE framework. In this document, states affirm that democracy is an essential component of the rule of law and that the rule of law is not just "a formal legality but justice based on the recognition of the acceptance of the supreme value of the human personality.

2. DISCUSSION

In international law, the concept of non-discrimination is crucial. The Universal Declaration of Human Rights, the ICCPR, the CRC, and other documents include various definitions of the ban of discrimination. Other instruments aim to address the prohibition of discrimination in the exercise of one or more rights, such as ILO 111, which refers to discrimination in the exercise of the right to life. Some instruments are expressly intended to address specific prohibited grounds for discrimination, such as The International Convention on the Elimination of All Forms of Racial Discrimination and The Convention on the Elimination of All Forms of Discrimination Against Women. Article 1 of the CERD, Article 1 of CEDAW, Article 1 of ILO 111, and Article 1 of the Convention Against Discrimination in Education all include definitions of discrimination. It is possible to infer from the various definitions that "discrimination" refers to any distinction, exclusion, or preference made between individuals or groups of individuals on the basis of race, color, sex, religion, political opinion, nationality, or social origin that has the effect of preventing or impeding the equal enjoyment of any human rights. Generally speaking, human rights agreements oblige governments to respect human rights and make sure that everyone living on their territory and under their jurisdiction has access to the rights that are promised without any exceptions. A state may not discriminate even when it is permitted to take actions that exempt it from its duties under a human rights treaty[7], [8].

International human rights law has long recognized that not all differences in treatment amount to discrimination. The adage "people who are equal should be treated equally and those who are different should be treated differently" succinctly captures this. There may be

circumstances when varied treatment is appropriate since, as stated by the Human Rights Committee, "the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance."

International law offers certain standards for assessing whether a distinction amounts to discrimination, notwithstanding the fact that not all disparities in treatment are discriminatory. In a nutshell, where a distinction has an objective and reasonable basis, pursues a legal purpose, and there is an acceptable ratio of proportionality between the methods utilized and the goal sought, it is consistent with the concept of equality. Some of the main human rights supervisory authorities have emphasized the importance of these standards. as stated by the Human Rights Committee, as an example. If the basis for such distinction is fair and objective and if the goal is to attain an objective that is permissible under the Covenant, then it will not always be considered discrimination[7], [8].

According to the European Court of Human Rights

The Court's preeminent case law holds that a distinction is discriminatory if it "has no objective and reasonable justification," or if it doesn't pursue a "legitimate aim" or if there isn't a "reasonable relationship of proportionality" between the means used and the goal sought to be realized. Therefore, there is no discrimination if the disparity in treatment serves a justifiable goal and does not result in circumstances that are against the law, reason, or the nature of things. It follows that when the classifications chosen are based on significant factual differences and there is a reasonable relationship of proportionality between these differences and the objectives of the legal rule under review, there would be no discrimination in differences in treatment of individuals by a state. These objectives may not be arbitrary, capricious, dictatorial, or at odds with the inherent unity and dignity of humans. They may also not be unfair or irrational. Therefore, treatment disparities that meet the aforementioned requirements are not discriminatory and do not violate the principles of equality and non-discrimination. Additionally, certain preferential treatment, such as that intended to safeguard pregnant women or handicapped people, is not seen as discrimination since its goal is to address underlying disparities. Affirmative action, which is defined as steps required "to diminish or eliminate conditions which cause or help to perpetuate discrimination," must not be seen as "discrimination" if it is intended to benefit historically underprivileged groups in society.The anti-discrimination laws prohibit any discrimination that has the "purpose" or "effect" of preventing or restricting the equal enjoyment or exercise of rights. In other words, the concept of non-discrimination forbids both 'direct' and 'indirect' kinds of discrimination.The term "indirect" discrimination refers to a legislation, practice, or criteria that seems to be "neutral," has been applied equally to everyone, but has the unintended consequence of favoring one group over another that is more disadvantaged. Whether or whether there was an intention to discriminate on one of the forbidden reasons is irrelevant when deciding whether indirect discrimination occurred. Instead, what counts is how a law or action affects people[9], [10].

Groups at Risk and Non-Discrimination

The non-discrimination principle mandates that vulnerable groups and the members of such groups get special consideration. In actuality, the most marginalized sections of society are often the discrimination victims.In order to fully enjoy all human rights, states should identify the individuals or groups of individuals who are most at risk and disadvantageous and take action to protect them from any negative effects.The concept of non-discrimination may call for governments to adopt affirmative action or safeguards to avoid or make up for structural disadvantages. Because they are intended to protect especially vulnerable groups or eliminate

structural obstacles, these policies include special preferences but shouldn't be seen as discriminatory because they promote equitable participation.

The Human Rights Committee often makes reference to the need for the implementation of affirmative action via its General Comments, and it has established a definition in General Comment 18, para. The Committee also wants to draw attention to the fact that the principle of equality sometimes calls on states parties to take affirmative action in order to lessen or get rid of the circumstances that give rise to or support discrimination that is against the Covenant. This is stated in paragraph 10 of the report. For instance, the state should take concrete steps to address any situations that impede or restrict a certain segment of the population from exercising their human rights. This may include giving the affected population segment preferential treatment in particular areas for a period of time relative to the rest of the population. However, it is an example of permissible distinction under the Covenant as long as such action is required to end actual discrimination. The goal of affirmative action is to eliminate barriers that prevent disadvantaged groups including women, minorities, indigenous peoples, immigrants, and people with disabilities from advancing. It is crucial to emphasize that affirmative action has a transient nature and cannot continue once its goals have been met.

To Combat Discrimination Through Education

In the fight against prejudice, education is crucial. On the one hand, educating the public is crucial for eradicating misconceptions and fostering tolerance. On the other hand, education and understanding of their rights and the channels for redress increase their protection since most disadvantaged groups often lack legal knowledge and worry about intimidation or reprisal.

Favor of Positive Action Initiatives

In the context of human rights legislation, the "affirmative action" process is a crucial instrument for addressing some of the enduring injustices that underlie inequality in contemporary society. The idea may be compared to an elevator system that raises a certain group of people from level zero to the level that the rest of the population enjoys. The historical prejudice that has persisted through time sometimes contributes to the differences between the target group and the rest of the population, or "the gap." However, an elevator mechanism admits the necessity for the concentration of certain actions intended at the relief of a specific disadvantage suffered by a specific group, as opposed to a rewrite of history, which is undesirable. But most importantly, the process can only work if it lifts the population to level one, not to a level higher than the rest of the population, since it would constitute unfair discrimination against that group.In order to achieve effective equality, affirmative action is described as "a coherent package of temporary measures, of a temporary nature, specifically aimed at correcting the position of members of a target group in one or more aspects of their social life."

It is crucial to emphasize empirical reasons when assessing whether a certain demographic group is entitled to a set of special measures. The existence of a determinable and pervasive status of inequality and the effective articulation of the legal right to special measures by representatives should be at least two criteria used to evaluate the claim for affirmative action, though the latter argument should come second to the former. A waiver of this privilege should also be possible for organizations or members of such groups who desire to integrate.Of course, there are many additional factors that should be taken into consideration when determining whether affirmative action is appropriate, such as the fact that these actions often generate new disadvantaged groups. In addition, those who get such assistance often

express the opinion that receiving special assistance often diminishes their own accomplishments. Instead, then receiving funding based on merit, they are seen by the public as nothing more than symbolic recipients of policy.

However, the need for extraordinary measures surpasses these. It nevertheless serves as an admittedly unsatisfactory legal guarantee via which past power dynamics within a system are attempted to be balanced. Second, these actions aim to address structural and social inequalities. Thus, they aim to develop strategies for fighting structural and institutional inequities, without necessarily addressing prejudgment that already exists. By encouraging new hopes and expectations among groups with a view to broader engagement in all facets of public life, it aims to create diversity or proportionate group representation. The social utility argument, which emphasizes that society as a whole is better off with all its components engaging in processes that impact them, is a fourth argument in favor of affirmative action. Related to this is the belief that by permitting methods other than violence for discussing complaints, engagement between various factions in a community might help quell any future social upheaval. The state is more likely to foster a pluralistic mentality that promotes more peace and equality amongst groups if its public activities are more inclusive.

Human Rights Treaty Obligations Being Modified

A treaty's text is typically adopted with the agreement of the governments involved in its negotiation or by a majority at an international forum. Only the nations that have agreed to be bound by the treaty and for whom it has become effective are subject to it. States may indicate their assent to be bound in a variety of ways. Depending on what the treaty specifies and what the relevant national practice is, they may do so by ratification, acceptance, approval, or accession. A rising number of states now sign conventions first, then send them to their legislatures for approval before ratifying them. The treaty may take a number of years to be ratified once it is adopted.A convention only comes into effect when the required minimum number of states proclaim their willingness to be bound by it. For instance, according to the ICCPR, the Covenant takes effect three months after the day on which 35 documents of ratification or accession are deposited. On December 16, 1966, the UNGA enacted the ICCPR; on December 19, 1966, it was made available for signature, ratification, and accession; and on March 23, 1976, or almost 10 years after its adoption, it came into effect.

Different techniques bind states to treaty requirements. In accordance with several treaties, a state party may be entitled to place restrictions on some of the treaty's clauses. A reserve restricts the application of the relevant law or makes it non-binding. In rare circumstances, states may also make a statement outlining how they would interpret a provision or how much they intend to be bound by it.The majority of human rights are also not unalienable; they may be restricted under certain conditions. Numerous human rights treaties provide for the limitation of certain rights for the sake of public morality, public health, or national security. The freedom to travel around, the right to practice one's religion, the right to gather in peace, and the freedom to associate are a few examples of rights that are not unqualified. However, any restrictions that a state imposes on rights must adhere to certain guidelines. Last but not least, several human rights accords permit a state party to unilaterally derogate momentarily from parts of its commitments during a legal state of emergency that has been officially proclaimed.

Convention on the Law of Treaties of Vienna

An international agreement known as the Vienna Convention on the Law of Treaties was ratified on May 22, 1969, and it became effective on January 27, 1980. The existing

international customary law on treaties was codified by the VCLT, which also added certain clarifications and filled up some gaps. Most states have joined as parties. Furthermore, the clauses that represent customary international law may even bind governments that are not parties to the Convention itself.The following elements of international treaties are governed by the VCLT, among others. A treaty's conclusion and coming into effect, reservations, observance, application, and interpretation, amendments and modifications, and invalidity, termination, and suspension of its operation are all covered.

Statements of reservations

When signing a treaty, a state has the option to limit its domestic applicability beyond what is allowed under the aforementioned restrictions by developing reservations, declarations, and interpretive statements. Although it is ideal for states to ratify a convention without any conditions, this is often not the case.

Reservations

A reservation is, in general, a declaration made by a state that seeks to exclude or modify the legal significance of a treaty's provisions as they relate to that state. A state that would normally be unable or unwilling to join in a multilateral treaty may be able to do so with the help of a reservation.Object and purpose of the Convention limit both the freedom of making reservations and that of objecting to them," the International Court of Justice stated in its Advisory Opinion on the Genocide Convention. These words were later codified in Article 19 of the Vienna Convention on the Law of Treaties, which lays out the general rule on reservations.

The reserve is forbidden by the treaty; the treaty only permits certain reservations, which do not include the reservation in issue; or, in circumstances other than those covered by subparagraphs and, the reservation is inconsistent with the treaty's goal and purpose. The adoption of a reservation by other states parties is necessary for it to be effective, unless a treaty specifically forbids it. Any other state party is free to protest. A reservation is often regarded as accepted by another state party if that state party does not object within a year after being informed of the reservation (VCLT). Unfortunately, the frequent reaction to concerns from other states parties seems to be quiet, and this silence is almost seldom the product of deliberate thought.

In order to be effective, concerns should be expressed "as precisely and narrowly as possible," according to the UN Commission on Human Rights. Reservations sometimes signify a country's acknowledgment that it is unable or unable to bring its behavior up to par with international norms. Additionally, establishing general reservations may persuade other states to do the same, which would limit the capacity of the state making the reservation to object when other governments make comparable reservations. Additionally, such restrictions can be in violation of accepted norms of international law, such as Article 27 of the Vienna Convention on the Law of Treaties, which stipulates that "A party may not invoke the provisions of its domestic law as justification for its failure to perform a treaty.Reservations "of a general character" are forbidden under Article 57 of the ECHR. In Belilos v. Switzerland, the European Court of Human Rights considered the topic of general reservations. In Loizidou v. Turkey, the Supreme Court ruled that a state cannot object to a provision of the Convention that deals with procedural or legal issues rather than fundamental rights and freedoms.

Contracting Parties would be allowed to join different enforcement regimes of Convention commitments if these clauses permitted substantive or geographical constraints. The Inter-

American Court has addressed the issue of reservations in its Advisory Opinion No. 2 on the 'Effect of Reservations on the Entry into Force of the American Convention on Human Rights' and Advisory Opinion No. 4 on 'Proposed Amendments to the Naturalization Provisions of the American Convention on Human Rights.' Such a system would seriously weaken not only the role of the Court but would also reduce the effectiveness of the Convention as a constitutional instrument of European public order. Many complaints have been made about certain agreements, including the Convention on the Elimination of All Forms of Discrimination Against Women, some of which are obviously incompatible with the treaty's goals. International law is still debating the implications of invalid reservations to human rights treaties and objections to reservations. In light of this circumstance, the independent monitoring bodies—including the CEDAW Committee and the Human Rights Committee—have expressed an opinion on the legality of reservations, a move that the VCLT does not support. Although there has been discussion over these bodies' competency in this area, it makes sense to assume that their competence is a result of the work they do. In General Comment 24 on matters pertaining to reservations expressed upon ratification or accession to the Covenant or the Optional Protocols, the Human Rights Committee addressed this subject. The Committee emphasized in its General Comment that "reservations must be precise and clear. Therefore, reservations cannot be generic; rather, they must specifically reference a specific Covenant provision and describe their scope in connection to that provision.

Declarations

Some conventions let or even demand that states parties declare how much they are obligated by a certain provision. Such claims can concern a supervisory mechanism's ability. For instance, the ICCPR's Article 41 provides that a state party may choose to recognize the Human Rights Committee's authority to hear state complaints about its compliance with human rights obligations. The instruments' provision for this form of disclosure means that there are no significant issues. However, a state party may also issue interpretive declarations, often known as understandings, wherein it expresses its interpretation of a specific article without intending to change or restrict the treaty's contents. Due to their difference with caveats, these interpretive pronouncements may cause some issues in international law.Regarding the subject of interpretive statements, the VCLT remains quiet. However, the International Law Commission has thoroughly examined the topic and various international human rights organizations have addressed it. The author's motivation for making the statement is one of the key distinctions between a "reservation" and a "interpretative declaration." While a reservation aims to limit or alter how the treaty's provisions apply to the state author, an interpretive statement only aims to make clear what those provisions mean or cover. As a result, what counts is the state's objective rather than its form, name, or title. As a result, a declaration is considered a reservation if it seeks to limit or alter how a treaty applies to the state. On the other hand, it is not a reservation if a so-called "reservation" just expresses a state's interpretation of a provision without excluding or changing that provision.

Limitations or restrictions

Conventions and other documents may include a variety of limits or restrictions on the rights they provide. Most people agree that very few liberties and rights are "absolute." Nevertheless, such limitations must never be used as a justification for violating or completely eliminating the protected right; rather, they must be utilized to define the right's legitimate boundaries. Generally speaking, there must be a proportional connection between the basis for the limitation and the restriction of the right as such.

There are clauses in some international treaties that provide limitations on human rights. These clauses might be expressed as generic restrictions. For instance, Article 4 of the ICESCR states that States Parties to the Present Covenant Recognize that States Parties to the Present Covenant may subject such rights to such limitations as are determined by law only to the extent that such determination is compatible with the nature of such rights and solely for the purpose of promoting general welfare in a democratic society. Another example is found in Article 32 of the American Convention on Human Rights, which states that "In a democratic society, each person's rights are limited by the rights of others, by the security of all, and by the just demands of the general welfare."Although there is no specific restriction clause in the African Charter on Human and Peoples' Rights, Article 27 on "Duties" has come to serve as a general limitation clause, stating that "Each individual's rights and freedoms shall be exercised with due regard to the rights of others, collective security, morality, and common interest.

Conventions often include a clause that forbids using an international instrument to violate another right in order to avoid misuse. For instance, Article 5 of the ICCPR states that nothing in the present Convention should be interpreted as giving any state, group, or individual the right to engage in any activity or to carry out any act with the intention of destroying any of the rights and freedoms acknowledged herein or of limiting them more severely than is permitted by the present Covenant. Nevertheless, in addition to these specific provisions, the majority of human rights treaties also include explicit provisions in a number of individual articles that outline the limits and restrictions that may be placed on a certain right. There are certain rights for which there are no established restrictions, such as freedom from slavery or torture.No further restrictions are allowed when a right is subject to one, and any restriction must adhere to the following minimal standards:

1.The restriction must not be read in a way that compromises the core of the relevant right;

2.The restriction must be rigorously read in the context of the specific right;

3.The restriction must be outlined by law and be appropriate for the instrument's intended use;

4.The limitation must be supported by legislation;

A compelling societal necessity must exist, which is determined on a case-by-case basis, and the limitation must be essential. The mere fact that the legislation would be beneficial is insufficient; it must also be compatible with other rights that are protected. The requirement that it be "necessary" is added to some treaties, and the restriction must be justified by safeguarding a strictly defined set of public interests. These interests typically include one or more of the following: national security, public safety, public order, the protection of health or morals, and the protection of others' rights and freedoms. The majority of these standards were created by academics and prominent human rights organizations via their legal precedents. In this respect, it's crucial to keep in mind the Siracusa Principles about the International Covenant on Civil and Political Rights' limitation and derogation clause. The International Commission of Jurists gathered a group of 31 eminent international law experts, who met in Siracusa, Sicily, in 1984 and approved the Siracusa Principles.

3. CONCLUSION

The essay also emphasizes how crucial equality and non-discrimination are in redressing past wrongs, fostering social inclusion, and furthering the rights and dignity of vulnerable and excluded groups. The report emphasizes that the concept of equality and non-discrimination

is an enforceable legal requirement on governments, not only an aspirational goal. It urges continuing efforts to end prejudice in all of its manifestations, both in theory and in reality, and to build a society where everyone has access to the same opportunities and rights. The article emphasizes in its conclusion that adhering to this concept is both a moral requirement and an essential step toward the realization of a fair and equitable global society. The underlying basis of international human rights legislation is the idea of equality and non-discrimination. This essay has shown the deep importance of this concept for the exercise of human rights by illuminating its origins in history, development, and current applicability.

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CHAPTER 9

AN OVERVIEW OF LAW FOR THE PRACTICE OF JOURNALISM

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ABSTRACT:
The practice of journalism plays a pivotal role in upholding democratic values and ensuring the free flow of information. This paper examines the legal framework that governs the practice of journalism, emphasizing its significance in protecting freedom of expression, safeguarding journalistic integrity, and balancing the rights and responsibilities of journalists. Through an in-depth analysis, this study explores the diverse legal aspects of journalism, including defamation, privacy, access to information, and media regulation. It also delves into the challenges posed by emerging technologies and digital journalism in the context of legal norms. The paper underscores the critical importance of a robust and adaptable legal framework that supports responsible journalism while respecting fundamental rights.The abstract highlights the central role of journalism in a democratic society and introduces the various legal considerations that shape journalistic practice. It emphasizes the delicate balance between protecting freedom of the press and addressing legal limitations, such as defamation and privacy laws.

KEYWORDS:

Accuracy, Censorship, Ethics, Freedom, Media, News Reporting.

1. INTRODUCTION

Any limitation on the exercise of rights protected by human rights treaties must be based on law, non-discriminatory, proportionate, consistent with the nature of the rights, and intended to promote the welfare of society. Finally, it is crucial to emphasize that it is the responsibility of the state parties to demonstrate the legality of any restrictions placed on the exercise of rights. Although the burden of evidence is high, it is compatible with the goal of human rights accords, which is to safeguard the person[1], [2].

Derogations

Certain human rights accords permit nations to take actions that temporarily renege on part of their commitments. Derogatory actions must be unique and short-term in character. Article 15 of the ECHR, Article 27 of the ACHR, and Article 31 of the European Social Charter all include derogation provisions. The African Charter on Human and Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child all forbid derogation clauses. Derogation clauses are used to create a balance between a government's sovereign authority to keep the peace and order during times of public emergency and the protection of a person's rights against abuse by the state. Thus, as long as it abides by protections against any misuse of these derogation provisions, the state is permitted to suspend the use of particular rights when it's required to handle an emergency[3], [4].

1. When derogation measures are permitted, they must adhere to a number of requirements.
2. There must be a war or widespread disaster endangering the survival of the country;
3. The declaration of an emergency must be made in writing;

4. Measures may not exceed what is absolutely necessary in the circumstances;

Measures may not violate other international law responsibilities, and they may not discriminate exclusively on the basis of a person's race, color, sex, language, religion, or social origin.A state that exercises its right to derogation must right away justify both its decision to declare a state of emergency and any particular actions taken in response to that declaration. The Conference on Security and Co-operation in Europe's Final Document from its 1991 Moscow conference specifies the derogations and limits. The participating nations underline that only the most extraordinary and serious circumstances may justify a declaration of public emergency. It is prohibited to utilize a state of public emergency to undermine the democratic constitutional system or to seek to eliminate basic freedoms and human rights that are acknowledged on a global scale[5], [6].

Human Rights Treaty Interpretation

Due to the fact that human rights legislation is a subset of international law, in general, human rights treaties must be interpreted in accordance with the standards of international law. The Vienna Convention on the Law of Treaties, which contains the rules for interpreting international treaties, is generally regarded as embodying the principles of treaty interpretation under customary international law. However, while interpreting human rights accords, it is important to take into consideration their unique features.The VCLT's Articles 31 to 33 lay forth the guidelines for treaty interpretation. Article 31 of the VCLT, which incorporates a variety of features, serves as the primary provision for treaty interpretation. The first clause states that a treaty must be construed "in good faith." This rule emphasizes the significance of the good faith concept found in Article 26 VCLT and applies it to treaty interpretation. It is stipulated that a treaty should be construed in line with the usual interpretation to be given to the treaty's words, in their context, that is, upon a systematic examination of the whole instrument. Additionally, this must be done in consideration of the treaty's goals and objectives[7], [8].

According to paragraph 2 of Article 31, when interpreting a treaty, the context also includes any agreements or instruments related to the treaty's conclusion, any later agreements and practices regarding its interpretation, as well as the treaty's text, including its preamble and annexes. In accordance with paragraph 3, all relevant norms of international law that apply in the relations between the parties are to be considered, in addition to the context.In accordance with Article 32 of the VCLT, additional means of interpretation may be used to either confirm the meaning obtained by applying Article 31 or to ascertain the meaning when applying Article 31 "leaves the meaning ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable." Article 32 states that the treaty's preparations and the circumstances surrounding its completion are among the additional ways of interpretation. It is crucial that the travaux préparatoires are only used as an additional way of interpretation under the VCLT. The International Court of Justice has ruled that treaties should be interpreted and applied in accordance with the applicable legal system at the time of interpretation rather than when the text was drafted or adopted. In the interpretation of human rights treaties, the drafters' intentions typically do not play a significant role. For instance, it is by no means unusual to encounter rulings of the European Court of Human Rights that go against the authors' explicit objectives.

Specific goals and objectives of human rights agreements

It is commonly known that the basis for interpreting human rights treaties is provided by the standards for treaty interpretation. This is clear from the various human rights oversight agencies' jurisprudence. The Human Rights Committee and the regional human rights courts

have made it clear that the necessary international law standards for interpretation are included in the VCLT's norms of interpretation. As was previously mentioned, the VCLT rules are not clear-cut, therefore using them does not completely eliminate treaty interpretation issues. Furthermore, it is necessary to take into consideration the unique features of human rights treaties while interpreting them. The International Court of Justice first acknowledged the unique nature of human rights accords in 1951. The Court held that the parties to such treaties do not have any particular benefits or disadvantages or interests of their own in its Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, but only a shared interest. The obligations of states parties are one feature that sets human rights treaties apart from other international treaties. Human rights treaties are agreements between nations that provide certain rights to people who are not themselves parties to the instruments, with the primary responsibility for these obligations being with the state[9], [10].

This unique quality of human rights instruments has been explained by the Inter-American Court in clear terms, highlighting the fact that modern human rights treaties in general and the American Convention in particular are not multilateral agreements of the conventional type reached to carry out the reciprocal exchange of rights for the mutual benefit of the contracting states. The preservation of fundamental human rights of every person, regardless of nationality, against both the state of their country and all other contracting nations, is the aim and goal of these agreements. By signing these human rights treaties, the states are seen to submit to a legal system where they are required to take on certain commitments for the benefit of all people under their jurisdiction rather than just other states.In the case of Austria v. Italy, the European Commission for Human Rights adopted the same strategy and determined that the obligations made by the High Contracting Parties under the European Convention are essentially of an objective nature, being intended to safeguard individual human rights against violations by any of the High Contracting Parties rather than to create subjective and reciprocal rights for the High Contracting Parties themselves. This strategy may also be seen in the European Court of Human Rights' case law. In the case of Wemhoff v. Federal Republic of Germany, the Court said that since the Convention is a "law-making treaty," it is essential to seek the most suitable interpretation in order to realize its purpose and fulfill its objectives.

2. DISCUSSION

It is significant to note that there are other interpretational rules that should be taken into account, such as the interpretive principle that mandates that limitation clauses be interpreted and used in a limited manner. In conclusion, the goal and aim of human rights accords are vital and essential to how they should be interpreted. The preservation of the unique human being is the particular aim and goal of human rights accords. This not only justifies but also requires consistent implementation and interpretation of the requirements of human rights accords. This mission and objective necessitate that we consider, at the very least, the following three principles.

The Efficiency Principle

It is obvious that their interpretation should make such protection effective since the primary purpose of human rights accords is to safeguard individual rights. The effective protection of human rights is the American Convention's mission and purpose, as the Inter-American Court has stated. Therefore, the Convention must be construed in order to give it its full meaning and to allow the Commission and the Court's system for protecting human rights to achieve its "appropriate effects." The European Court's case law shows how this concept has been

used. as cited by the Court. Regard must be given to the Convention's unique status as a convention for the collective enforcement of human rights and fundamental freedoms while interpreting it. As a tool for the protection of individual humans, the Convention's goal and purpose demand that its provisions be read and used in a way that makes its protections usable and effective.

Evolutionary Analysis

Individual protection also necessitates an evolving understanding of human rights conventions. Since human rights are not fixed, it is necessary to take changes in society and the law into consideration in order to effectively preserve them. The European Court of Human Rights, which repeatedly emphasized that the Convention is a "living instrument, which must be interpreted in the light of present-day conditions," has regularly emphasized the significance of taking into consideration the changes happening in society and the law.

It is important to remember that the evolutive interpretation's significance is a result of the human rights treaties' supreme mission and purpose, much as with the efficacy principle. To ensure that human rights laws are "practical and effective" and take into consideration "present-day conditions," the language must be interpreted in the context of its intent and purpose. For instance, the European Court's ruling in Loizidou v. Turkey makes this obvious. The Court's case-law is deeply founded in the idea that the Convention is a living document that must be construed in light of current circumstances. As a result, these clauses cannot be understood purely in light of the intentions of their writers as they were stated more than 40 years ago. The Court said, "The object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied in a manner that makes its safeguards practical and effective."

The idea of evolutionary interpretation is also used by the Inter-American Court. In the course of the interpretation process, the Court itself has clarified that. Instead of examining the normative validity and importance that that instrument was thought to have in 1948, it is acceptable to look at the Inter-American system of today in light of the changes it has experienced since the passage of the Declaration. Awas Tingni Community v. Nicaragua). More recently, the Inter-American Court specifically referred to the rulings of the European Court of Human Rights and stated that "human rights treaties are living instruments, the interpretation of which must evolve over time in view of existing circumstances."

Autonomous Interpretation Rule

The rule of autonomous interpretation, which is closely connected to the rule of evolutive interpretation, is best described using two instances. A property right in the context of human rights law may have substantially wider implications than a property right as that term is used in national law. Similar to this, just because an act is prohibited under a country's criminal law does not make it a crime. In order to determine the meaning of the phrases in their respective treaties, the Inter-American and European human rights tribunals have insisted on their independence. The Inter-American Court of Human Rights defined the idea and its strong connection to the norm of evolutive interpretation in the case of Mayagna Awas Tingni Community v. Nicaragua. An international human rights treaty's provisions have a separate meaning that cannot be equated to the interpretation assigned to them by local law. Furthermore, since such human rights accords are living documents, their interpretation must change as society changes, especially in light of the way people live today. No clause may be regarded as limiting the exercise or enjoyment of any rights or freedoms guaranteed by any State Party's legislation or by any convention to which one of the aforementioned states is a party.In the case of Engel v. The Netherlands, the European Court of Human Rights outlined

the reasoning behind and significance of the idea of autonomous interpretation. The operation of Articles 6 and 7's fundamental clauses would be subordinated to the sovereign will of the Contracting States if they had the discretion to classify an offense as disciplinary rather than criminal or to prosecute the perpetrator of a "mixed" offense under disciplinary law rather than criminal law. Such a wide freedom might produce outcomes that are inconsistent with the Convention's goal and purpose. Notably, the Inter-American and European Courts have adopted the principle of independent interpretation in defining, for example, what the notions of "penalty" and "witness" mean. These phrases are contained in the articles defining fair trial.

International Human Rights Monitoring Mechanisms

A broad variety of procedures for ensuring adherence to the agreed-upon norms have been developed as a result of the multiple human rights agreements that operate under the auspices of the United Nations and the regional systems in Africa, the Americas, and Europe.Two main kinds of supervisory systems exist.

a) Supervisory procedures based on treaties and included in binding agreements or documents relating to human rights. These organizations are often referred to as "treaty bodies" inside the UN system, such as the Human Rights Committee and the Committee on the Rights of the Child. Other treaty bodies include the European Court of Human Rights, the Inter-American Court and Commission of Human Rights, the African Commission and prospective Court on Human and Peoples' Rights, and others.

b) Supervisory methods not based on legally enforceable responsibilities derived from human rights treaty commitments. This kind of mechanism often is based on the charter or constitution of an intergovernmental human rights forum, or on decisions made by the assembly or another representative body of the forum in issue. The 1503 process and nation mandates are two examples of the "charter-based" non-treaty-based methods recognized by the UN. Another example of a regional, non-tradition-based agency is the European Commission against Racism and Intolerance, which operates under the Council of Europe. First and foremost, the sections that follow provide an overview of the treaty-based systems. Part II covers the non-treaty-based United Nations procedures.

Submitting Reports

A system of regular reporting is included in the majority of human rights accords. States that have ratified them are required to report to a supervisory authority on a regular basis how the relevant treaty is being implemented domestically. States parties are required to "submit reports on the measures they have adopted which give effect to the rights recognized herein and, on the progress, made in the enjoyment of those rights," as stated, for example, in Article 40 of the ICCPR. Each treaty body at the UN has established broad guidelines for the format and substance of the reports that states parties are required to submit, as well as its own rules of procedure.

The appropriate supervisory authority analyzes the report, provides comments, and has the option to ask the concerned state for more information. Generally speaking, the various treaty-based mechanisms' reporting processes are designed to help and open up a "dialogue" between the supervisory body and the state party. The state-submitted reports' quality varies. While some reports are credible and show sincere attempts to abide by the reporting standards, others lack this quality. In any event, the reports often represent the state's perspective. The treaty bodies also receive information on a nation's human rights status from non-governmental organizations, UN agencies, other international organizations, academic

institutions, and the press in addition to the official report. This extra information that the experts may get from external sources has a significant impact on the decision-making process throughout the reporting process. A broader view on the real situation in the nation is offered by additional information, particularly that supplied by NGOs and UN organizations. NGOs create and submit alternative reports to the treaty bodies in a growing number of nations in an effort to balance the information provided by the state. The Committees and government officials review the reports in light of all the information available. The Committees make decisions on their "concluding observations," or recommendations to the state in question, based on this discussion.A reporting mechanism is established by all UN human rights treaties. Despite the fact that each Committee has created its own unique procedures, most of them are similar. The ICESCR's reporting process operates as follows.

Five members of the Committee gather before each meeting to decide in advance which issues would be the main topic of conversation with state officials during the constructive discourse. A list of topics to be considered while reviewing the state party report is created by this "pre-sessional working group" and sent to the permanent delegation of the state in question. The purpose is to provide the state the option of preparing responses in advance and to consequently improve communication with the Committee. The debate may also bring up additional topics; the list of themes is not intended to be all-inclusive. States should provide written responses to the topics listed well in advance of the meeting so that the Committee members may access them in their respective working languages. Typically, the "list of issues" for a particular nation includes the concerns of the Committee or the issues that the state did not adequately address in its report.

The Positive Conversation

State attendance at the meeting for the discussion of their reports is actively encouraged by the Committee. 'Constructive discourse' refers to the conversation between committee members and government officials. At any point throughout the debate, representatives of relevant specialized organizations like the ILO, WHO, UNICEF, and other international entities may also be called to provide their input. The conversation with state representatives provides the Committee with an invaluable chance to discuss challenges in the Covenant's implementation and to clarify the normative meaning of specific Covenant provisions. Public access to the summaries of these talks is provided via printed UN papers and is now also accessible online through the OHCHR's website. State experts typically acknowledge the shortcomings of the governments they represent and the challenges faced in putting the Covenant into practice in the conversation, which is usually quite candid and open. Experts on the committee have the chance to clearly explain the extent of the duties in question.

3. CONCLUSION

The changing nature of journalism in the digital era and the need for new legal frameworks. The article acknowledges that journalistic practice is inextricably related to the legal context in which it functions. It makes the claim that protecting journalistic independence and the public's right to knowledge requires a robust and adaptable legal system. The study ends by highlighting the continued significance of sustaining these legal standards as journalism continues to change and encounter new difficulties in the contemporary media environment. In addition to being a pillar of democracy, journalism is a career that is closely linked to the judicial system. This essay has examined the complex link between law and journalism, highlighting how important the legal system is in determining how journalism is practiced and safeguarding basic rights.

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CHAPTER 10

SUPERVISION AND IMPLEMENTATION OF HUMAN RIGHT

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ABSTRACT:

The supervision and implementation of human rights represent a crucial dimension of modern legal and ethical frameworks. This paper explores the multifaceted aspects of human rights oversight, highlighting its significance in ensuring the protection and realization of fundamental rights for all individuals. Through a comprehensive analysis, this study examines the various mechanisms and institutions responsible for supervising and implementing human rights at the national and international levels. It also delves into the challenges and opportunities inherent in this process, considering factors such as cultural diversity, legal frameworks, and the evolving landscape of global human rights.The abstract underscores the central role of human rights supervision and implementation in upholding the principles of dignity, equality, and justice. It acknowledges the diversity of approaches and strategies employed to monitor and enforce human rights, from national human rights institutions to international treaties and conventions. The paper also recognizes that while progress has been made, challenges persist in achieving universal human rights standards.

KEYWORDS:

Enforcement, Human Rights, International Oversight, Monitoring, Protection, Reporting.

1. INTRODUCTION

'Supervision' and 'application' of human rights are sometimes difficult to distinguish clearly, and there is no standard international language. The phrases "protection," "supervision," "monitoring," and "implementation" are often used in human rights literature to refer to both the systems put in place to check on states' conformity with the criteria and the actual compliance by such governments. All measures put in place at the international level with the intention of ensuring domestic conformity with human rights standards are referred to by the term "supervision" that was previously addressed. The word "implementation" in this context refers to both the actual observance of human rights norms by individual governments as well as any actions done by those states, other nations, and international organizations or other entities to advance respect for human rights and stop abuses.Sometimes the two phrases overlap, and some organizations use the same procedure for both implementation and oversight. There are two instances of this. Through, for instance, the provision of fellowships and expert assistance, advisory services in the UN human rights system address state compliance with human rights commitments and help nations improve respect for human rights[1], [2].

Along with dealing with monitoring, the UN Commission on Human Rights also permits individual nations to talk about implementation issues.The political will of governments to uphold international norms has a significant role in how well human rights legislation is implemented. To guarantee the successful application of international norms and standards, a network of non-state actors and international organizations should collaborate.Numerous different actions might be included in implementation. These primarily consist of initiatives aimed at enhancing state-level compliance, such as modifications to national laws or administrative procedures to conform to human rights standards, the bolstering of the

judiciary, population education, the creation of national human rights institutions, the raising of minimum health standards, the amelioration of prison conditions, and greater participation in politics. The adoption of international standards into domestic legislation, the creation of national human rights organizations, and human rights education are three of the many actions that nations must take at the national level to implement human rights standards that are covered in this section.States must adopt these requirements into domestic legislation in order to implement international human rights standards. Typically, human rights criteria are not explicitly outlined in international treaties, leaving it up to each state to determine how its domestic commitments will be carried out[3], [4].

International human rights instruments may be implemented domestically using a wide range of techniques. For instance, they have been divided up by scholars into the categories of adoption, incorporation, transformation, passive transformation, and reference. States may also use many variations of these techniques. There are two distinct systems, to put it very broadly. Once approved and published in the official gazette, treaty terms are automatically incorporated in certain nations, whilst other governments need formal legislative approval before they become domestic law. What matters most is whether or not domestic courts and other legal actors apply human rights norms in their decisions, regardless of the method states choose to incorporate international human rights law into their domestic systems. The impact of international human rights law cannot be evaluated in the abstract on the basis of a given country's constitution and legislation alone.International norms are simpler for domestic courts and legal professionals to adopt if they are integrated into national law. International human rights principles may be used by national courts as a guide for interpreting domestic law even when international human rights treaties have not been fully integrated into domestic law. In other words, national courts and legal practitioners may use global and regional human rights standards when construing and creating domestic legislation, and they may consider international human rights law to be the minimal level of protection that domestic legislation ought to provide[5], [6].

It is crucial to emphasize that all facets of the government must work together in unison to implement human rights standards domestically. For the efficient application of human rights at the home level, training and education in these areas are crucial. The establishment of national human rights institutions, such as ombudspersons, "defensorias del pueblo," and "procuradorias de derechos humanos," should be encouraged and facilitated by states in order to guarantee that human rights are safeguarded and advanced in a sustained manner over the long term. Details of these crucial implementation components are covered in detail.Finally, it's vital to note that nations are expected to take steps to increase public knowledge of human rights on a national or domestic level. They need to educate the public about human rights and the resources that may be used to help persons whose rights have been infringed. Information should be presented in a manner that is understandable to everyone, with special emphasis on the most vulnerable and disadvantaged groups in society.

States must launch public education and awareness campaigns on human rights at all levels, inside their own state institutions, and must target specific professions like judges, attorneys, teachers, and social workers.For poor nations, where a lack of resources may present onerous challenges to achieving human rights compliance in a fair amount of time, implementing human rights norms can be a demanding endeavor. Therefore, international cooperation is crucial to helping these nations adhere to global norms.A "positive" strategy, in which assistance is offered for the development of circumstances that promote adherence to human rights, or a response to a human rights violation may both be used to advance human rights norms in another nation. In order to achieve compliance, a differentiated strategy is often

utilized since it frequently works the best.For a thorough analysis of the function of governments in upholding human rights norms, and in particular the role of the European Union as an illustration of the function of states in advancing and defending human rights.

Positive Methods for Human Rights Promotion

One strategy to advance human rights is to encourage the formation of international organizations that work to create a setting where human rights are respected. Numerous organizations keep track of or support the observance of particular human rights, including the Inter-American Institute of Human Rights, which raises awareness of human rights in Latin America, the International Institute for Democracy and Electoral Assistance, and the Office for Democratic Institutions and Human Rights, which was founded to support democratic institutions in OSCE countries[7], [8].

Technical help, such as that offered via the UN Commission on Human Rights' advisory services system, or direct bilateral or multilateral technical aid, such as that to enhance the administration of justice, are examples of other types of cooperation. Furthermore, financial assistance may be offered to ensure that minimum requirements in the area of economic and social rights are reached via bilateral agreements or international organizations like the World Bank and UNDP.

Positive approaches can also take other forms, such as lobbying for human rights compliance among public officials and government officials, aiding human rights organizations, supporting the establishment of national institutions that promote or monitor compliance with human rights laws, supporting liberalization processes, and bolstering and supporting free trade agreements. It should be emphasized that there are various elements at play when building international cooperation on human rights, therefore a case-by-case approach should always be used.

Human Rights Violation Reactions: Negative Strategies

The ongoing need to respond to human rights breaches should not be minimized by the urge for proactive efforts to encourage international cooperation to create an "international human rights environment." Although many nations struggle to fulfill their commitments regarding human rights, a lack of resources cannot be used as an excuse for abuses of basic human rights. In order to encourage international compliance based on rights and values as opposed to national interests, states should respond to human rights transgressions in other nations.

Human rights breaches may be responded to using a variety of actions. Depending on how bad the current situation is, some of the following actions may be done. confidential representations to the relevant authorities, such as subtly bringing up the subject by asking questions about the facts in certain situations. using government representatives' travels to a nation to bring up the subject in private and, in extreme situations, publicly. Bilateral or joint démarches or representations with the government in question are often made via that country's representatives.

Parliamentary inquiries and discussions focused on a single topic. public proclamations, pronouncements, or démarches. using multilateral forums to bring the issue to the public's notice. Changing the focus or delivery methods of programs for development cooperation to promote civil society initiatives in nations with governments that do not uphold human rights.This is not a complete list. The specifics of the circumstance at hand, as well as the possible consequence of the responses, determine whether a measure is appropriate in that context.

2. DISCUSSION

Even if the best course of action might sometimes appear clear, the alternatives must be thoroughly considered. It goes without saying that initiatives to advance respect for human rights are less contentious than potential responses to abuses. However, it's also important to keep in mind that programs for development, economic, or trade cooperation must by their very nature have a structural, long-term structure in order to advance human rights. This typically entails cooperation with recipient nations for a considerable amount of time, even if the current state of human rights is still far from ideal. Effective human rights promotion is dependent on the funding sources available for such initiatives as well as the political will of the relevant government. Supportive actions are likely to fail in the absence of a clear and demonstrated governmental commitment to improving human rights. When human rights have been violated, there are occasions when a robust response is the appropriate course of action. Again, a case-by-case approach must be used in this situation. In theory, there is no 'trigger mechanism' that causes states to react automatically to breaches. With respect to human rights, states have progressively created a variety of holistic strategies. In each case, a concept is established that combines a variety of supporting and defensive actions. To prevent stereotyped and often ineffective answers, each case will need to be examined independently. Human rights provisions are incorporated in a number of cooperation agreements, both in the trade and economic ties and development cooperation sectors, to enable such comprehensive approaches. It permits a change in a working relationship according to evolving conditions[9], [10].

Since there seem to be fewer nations where governments are monolithic and where human rights are often abused, holistic methods are even more necessary. In other words, there are less and fewer circumstances that are obviously unpleasant and in which simple, perhaps quite obvious, reactionary responses may be made. There seem to be two patterns. One the one hand, it would seem that there are a growing number of nations with organizations, groups, and people working to advance human rights in both society and the government. On the other hand, even when official authorities have the best of intentions, infractions might nonetheless occur. As a result of changes in the relevant society, other governments are increasingly taking coordinated action. It is alarming that non-governmental organizations are increasingly violating human rights, yet it may be difficult to hold them accountable. In certain circumstances, the expansion of governmental instability and internal disarray makes this factor much more challenging. However, even in these situations, just denouncing human rights infractions is inadequate; proper measures are required.

It should be underlined that NGOs and private citizens, in addition to state governments and legislatures, play a crucial role in the actual implementation process. Not only are NGOs and people often more successful at gathering data and more adaptable in bringing up concerns related to human rights breaches, but they also provide state activities toward third nations the essential external and obvious legitimacy they need as well as research backing.Human rights fora will be examined in this section. The worldwide system for the defense of human rightsin this case, the United Nations systemwill be explored first. We'll next look at the three regional systems in Europe, the Americas, and Africa.

General Meeting

All United Nations member nations are represented in the General Assembly, and each state has one vote. According to Article 13 of the UN Charter, one of the duties of the UN General Assembly is to "promote international cooperation in the economic, social, cultural, educational, and health fields and assist in the realization of human rights and fundamental

freedoms for all without distinction as to race, sex, language, or religion." As a result, on December 10, 1948, the UNGA passed the Universal Declaration of Human Rights, which has subsequently been followed by many additional human rights documents.The majority of human rights-related topics that the UNGA discusses are outlined in reports from the Economic and Social Council or in resolutions that the UNGA has already enacted. Most human rights-related matters are referred by the UNGA to its Third Committee, which is in charge of social, humanitarian, and cultural problems. Human rights problems are periodically discussed by the Sixth Committee. The Special Committee on the Situation on Implementation of the Declaration on the Granting of Independence to Colonial has been established by the UNGA, one of the subsidiary organizations that is significant in terms of human rights.

Council Economic and Social

The Economic and Social Council has fewer members than the UNGA, with just 54 total. The ECOSOC "may make recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all," according to Article 62 of the UN Charter. Additionally, the ECOSOC has the authority to plan international conferences and present convention drafts to the UNGA. The ECOSOC has the authority to create commissions in the sectors of economics, society, and the advancement of human rights within the terms of Article 68. According to Article 64, the ECOSOC is given the authority to negotiate with the UN's member states and Specialized Agencies in order to acquire reports on the actions taken to implement both its own and the UNGA's recommendations.The ECOSOC discusses the research and resolution drafts that the UN Human Rights Commission has presented to the Council, as well as the Commission's findings. Decisions on the most crucial organizational issues are made by the ECOSOC, however the UNGA is routinely consulted on policy issues. The authority, scope, and composition of the Commission on Human Rights and other ECOSOC subsidiary bodies that deal with human rights are major organizational issues. The UN Commission on Human Rights, which established the Sub-Commission on the Promotion and Protection of Human Rights, the Commission on the Status of Women, the Commission for Social Development, and the Commission on Crime Prevention and Criminal Justice are just a few of the significant commissions that the ECOSOC has established. Additionally, in accordance with Article 71 of the Charter, the ECOSOC may consult NGOs that are engaged in the Council's activities.

Human Rights Commission

The major UN body responsible for human rights is the UN Commission on Human Rights, a functional commission of the ECOSOC. On 16 February 1946, the ECOSOC temporarily constituted it, with nine members working in their individual capacities. On 21 June 1946, it was created permanently, with members from eighteen nations. In 1979, the ECOSOC enlarged the Commission's membership to 43 and increased the length of the Commission's regular session to six weeks, plus an extra week for working groups. The number of members of the Commission was increased by the ECOSOC to 53 in 1990. The seats are allocated regionally, with a set number of seats for each of the five regional groupings. Every year in March and April, the Commission convenes. The ECOSOC chooses the members for a three-year term, with one-third of the seats available for election each year.

Mandate

The Commission's initial objective was to provide the Council with suggestions, recommendations, and findings regarding

a) A global human rights convention;

b) international declarations or treaties on civil liberties, women's rights, information freedom, and other topics;

d) Minorities' protection;

d) The elimination of prejudice against people based on their race, gender, language, or religion;

f) Any other human rights-related issues.

The mandate has been enlarged numerous times, most notably in 1967 and 1970 when ECOSOC Resolution 1235 gave the Commission the responsibility to address global human rights abuses in addition to its role as a standard-setter. Its scope was expanded in 1979 to include aiding the ECOSOC in coordinating human rights initiatives within the UN framework. The Commission follows the operational guidelines for functional commissions established by ECOSOC. Only members are permitted to cast ballots, however non-member nations are permitted to witness Commission proceedings and co-sponsor draft resolutions that are presented to the Commission. The UNGA, the Specialized Agencies of the UN, as well as a number of other intergovernmental organizations may also engage and make interventions on behalf of recognized liberation forces. NGOs having consultative status are permitted to send observers to the Commission's open meetings with the ability to speak.

Although the Commission's discussions are often open to the public, there are both open and private sessions where the general discussion of human rights abuses occurs. The Commission, among other things, considers infractions and makes judgments about them in the open meetings. Private meetings, which often last only one day, focus solely on issues brought up by the Sub-Commission on the Promotion and Protection of Human Rights. 'Violations of human rights and basic freedoms in any area of the globe' is the agenda item that the 1235 and 1503 procedures come under. The Commission adopts around 100 resolutions, rulings, andthe International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social, and Cultural Rights make up the International Bill of Rights, which was created by the UN Commission on Human Rights, which is particularly significant in terms of setting standards. A sizable number of additional international human rights treaties and declarations have also been written by it.The Commission is crucial to the administration of human rights.

Decisions made by the UNGA, the ECOSOC, or the Commission itself establish the supervision mechanisms. Subject to ECOSOC permission, the Commission is permitted to designate special rapporteurs, spokespeople, experts, and working groups. The nominated individuals provide the Commission with reports and recommendations on human rights-related issues in their individual capacities. The special rapporteurs are split into two groups: the theme rapporteurs, who focus on a certain global human rights concern, and the country rapporteurs, who concentrate on abuses in a specific nation.The Commission is essential to the implementation process. It is the main platform where individual nations and NGOs may discuss human rights problems. Additionally, research papers are created on its behalf and it has the ability to mandate studies on certain subjects, such the rights of prisoners. Numerous working groups have been established by the Commission, or the ECOSOC has been advised to do so. The Commission serves as a crucial decision-making body for the advancement of human rights; it has established a number of funds to aid in the work of organizations that set standards, to support those who have been harmed, and to advance human rights.

Sub-Commission on Human Rights Promotion and Protection

The UN Commission on Human Rights' primary subsidiary entity is the Sub-Commission. It was created by the Commission at its first meeting in 1947 under ECOSOC control. Members are chosen by the Commission for a three-year term after being nominated by respective governments. Every two years, half of the members are chosen, together with their alternates, to fill a four-year term. The Sub-Commission is anticipated to consist of objective, independent specialists with "high moral standing." Every year, the Sub-Commission has three weeks of meetings. Members of the Sub-Commission and/or their alternates, observers from UN member states, representatives from UN Specialized Agencies, representatives from intergovernmental organizations, NGOs with consultative status with the ECOSOC, and representatives from national liberation movements attend its sessions when a topic on the agenda affects them. Sub-Commission on the Promotion and Protection of Human Rights was the name given by the ECOSOC in 1999, replacing Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission's duties include

a) To conduct research, especially in light of the Universal Declaration of Human Rights, and to make recommendations to the Commission regarding the prevention of discrimination of any kind relating to fundamental freedoms and human rights as well as the protection of racial, national, religious, and linguistic minorities;

b) To carry out any additional tasks given to it by the Council or the Commission. To research specific concerns, the Sub-Commission often names rapporteurs and forms working groups. The Working Group on Communications, the Working Group on Contemporary Forms of Slavery, the Working Group on Indigenous Populations, the Working Group on Minorities, the Working Group on Administration of Justice, and the Working Group on Transnational Corporations are the six working groups that make up the Sub-Commission at the moment. The Working Group on Communications takes into consideration allegations that seem to show patterns of egregious and credibly verified human rights breaches. The Working Group on the Administration of Justice originally concentrated on the rights of prisoners, but it later broadened the scope of its work to include, for example, developing draft principles and rules for compensation for victims of severe human rights breaches. The Sub-Commission provides draft decisions and resolutions to the Commission and/or ECOSOC and approves resolutions, reporting to the Commission at the conclusion of each session.

Human Rights

The High Commissioner, who reports to the Secretary-General, is the top UN representative in charge of protecting human rights. In 1993, the post of High Commissioner for Human Rights was established. The East-West block rift in UN decision-making organizations and the concern about a High Commissioner with the authority to "interfere in internal affairs" were the main reasons why earlier attempts to create the position had failed. Attempts to create the position were renewed during the Vienna World Conference on Human Rights, with Western nations and NGOs like Amnesty International leading the discussion. After a protracted discussion, the Conference unanimously agreed to request that the UNGA "begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights" while reviewing the Conference report. Without conducting a vote, the UNGA resolved to establish the position of High Commissioner for Human Rights on December 20, 1993.The Secretary-General is the immediate supervisor of the High Commissioner for Human Rights, who holds the position of Under-Secretary-General. The duties include, among other things

a) Promoting and defending everyone's ability to effectively exercise their civil, cultural, economic, political, and social rights;

b) Executing the responsibilities entrusted to him/her by institutions of the United Nations system in the area of human rights and advising them on how to better promote and safeguard all human rights;

c) Promoting and defending the right to development's realization and strengthening the UN system's relevant organizations' support for this goal;

d) Offering advisory services, technical assistance, and financial support via the Centre for Human Rights and other suitable institutions in response to requests from the concerned state and, where appropriate, regional human rights organizations, with a view to assisting actions and programs in the area of human rights;

e) Coordinating relevant UN public education and awareness campaigns in the area of human rights;

f) Participating actively in eliminating present barriers, addressing difficulties to the full realization of all human rights, and avoiding the continuance of human rights abuses worldwide, as stated in the Vienna Declaration and Programme of Action;

g) Having a conversation with all governments on how to carry out his or her mandate in order to ensure that all human rights are respected;

h) Strengthening international collaboration to advance and defend all human rights;

i) Coordinating efforts to safeguard and advance human rights within the United Nations system;

j) The rationalization, adaptation, strengthening, and streamlining of the United Nations' human rights apparatus in order to increase its efficacy and efficiency. In addition to working with governments to promote national human rights protection, the High Commissioner has a specific role in coordinating UN initiatives in the area of human rights. By serving as a moral leader and a spokesperson for victims, the High Commissioner aims to lead the global human rights movement. On human rights emergencies, the High Commissioner often addresses the public and issues pleas.

José Ayala Lasso of Ecuador served as the first High Commissioner. He held the position from 1994 until 1997, when Mary Robinson, a former president of Ireland, assumed control of it in September 1997. Sergio Vieira de Mello, the third High Commissioner, held the position from 2002 to May 2003 before taking a leave of absence to serve in Iraq as the Secretary-General's Special Representative. On August 19, 2003, a bomb in Baghdad sadly killed him. Until Louse Arbour, a former prosecutor for the UN war crimes courts for the former Yugoslavia and Rwanda, was appointed to the position in February 2004, Bertrand Ramcharan served as the High Commissioner.

The primary UN Secretariat department responsible for human rights is the Office of the High Commissioner for Human Rights, which has its headquarters in Palais Wilson in Geneva. The Office of the High Commissioner for Human Rights and the Centre for Human Rights were combined into a single office as of September 15, 1997, in compliance with the UN's program reform.The Office provides support to a number of UN bodies, subsidiary bodies, and working groups. All treaty monitoring organizations, with the exception of the CEDAW Committee, which is handled by the Division for the Advancement of Women, use the Office of the High Commissioner as its secretariat. Every year, the Office receives and

manages more than 200,000 messages. Additionally, the Office creates human rights research, reports, and publications and takes a unique role in the Advisory Services Programme by planning international and regional seminars and courses on human rights-related topics. Finally, the Office offers technical guidance to governments. To further ensure that international human rights norms are gradually applied and realized at the national level, both in law and practice, a number of OHCHR field offices have been created. The Office of the High Commissioner has relatively little money and staff at its disposal, yet being tasked with a variety of duties.

Organizations of the UN

There are 15 members of the Council, 10 of whom are elected by the General Assembly to two-year terms and five of whom are permanent. The Security Council is in charge of maintaining international peace and security, as stated in Article 24 of the UN Charter. Human rights are often affected by the Security Council's decisions since they always come to the forefront anytime international peace and security are under danger. The Security Council Summit conducted in January 1992 covered the connection between human rights abuses and dangers to global peace and security. According to the Security Council, "Election monitoring, human rights verification, and the repatriation of refugees have been integral parts of the Security Council's effort to maintain international peace and security in the settlement of some regional conflicts, at the request or with the agreement of the parties concerned.Human rights are becoming a bigger priority for the Security Council. Many Security Council decisions have an effect on human rights as a result of the UN's progressive reorientation toward human security as an integrated concept. The Security Council's authorized interventions are often carried out in response to dangers to global peace and security. Examples include the intervention in Sierra Leone or Haiti.The Special Committee on Peacekeeping, the International Tribunal Committee, and other standing and ad hoc committees of the Security Council are also important in terms of human rights. International courts have historically been thought of as a way to peacefully settle international conflicts and compel governments to abide by international law. The International Court of Justice oversees the application of the law globally and has the authority, in some situations, to provide advisory opinions.

States that took part in the creation of international law tended to believe that only their own governments were accountable for breaking the law. But since the 1919 Versailles Treaty, it has been more and more commonplace to hold people accountable for breaking international law, particularly international humanitarian law. The Nuremberg and Tokyo trials, where people were convicted for war crimes committed during the Second World War, established individual criminal responsibility for crimes against peace, war crimes, and crimes against humanity. The International Criminal Tribunals for the Former Yugoslavia and Rwanda were established by the Security Council in response to the atrocities that occurred in those countries in order to uphold peace and foster reconciliation by holding those responsible for genocide, crimes against humanity, and war crimes accountable. The ad hoc courts' authority was severely constrained since they could only address incidents that happened on a specific piece of land and within a certain time span. However, the recently established International Criminal Court has the authority to look into, try, and convict people who are believed to have committed the most serious crimes of concern to the entire international community on the territory of states parties, or if they are nationals of a state party to the Statute establishing the Court. Experience has shown that international courts and oversight bodies often need a significant amount of time to mature, accumulate experience, and establish worldwide legitimacy and efficacy.

3. CONCLUSION

In conclusion, the article emphasizes the need of improving the oversight and application of human rights in order to create a more fair and equitable society. It highlights that in order to make sure that human rights are not only abstract principles but actual safeguards for everyone, this work need the active participation of governments, civil society, and the international community. The worldwide commitment to uphold the dignity and rights of every person is fundamentally based on the monitoring and implementation of human rights. This essay has examined the varied character of this undertaking, highlighting the importance of it in light of contemporary ethical and legal frameworks. From national human rights organizations to international treaties and agreements, human rights oversight includes a diverse range of processes and institutions. By acting as a check and balance, these mechanisms make sure that governments and other actors maintain their duties to respect, defend, and preserve human rights. They provide victims of rights breaches a way to seek remedy and help advance global norms for human rights.

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CHAPTER 11

AN OVERVIEW ON INTERNATIONAL COURT OF JUSTICE

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ABSTRACT:

The International Court of Justice (ICJ), often referred to as the World Court, stands as the principal judicial organ of the United Nations. This paper explores the ICJ's role, jurisdiction, and significance in the realm of international law and diplomacy. Through a comprehensive analysis, this study examines the Court's functions, including its advisory and contentious jurisdiction, as well as its role in settling disputes between states. It delves into the historical context of the ICJ's establishment, its relationship with other international bodies, and its impact on the development and enforcement of international law. The abstract highlights the critical role of the ICJ in promoting peaceful resolution of disputes among nations and its contributions to the evolution of international legal norms.The abstract outlines the ICJ's pivotal position in the international legal landscape, emphasizing its role in resolving disputes and providing legal advice to the UN General Assembly and Security Council. It acknowledges the challenges faced by the Court in addressing complex issues and the importance of its decisions in maintaining global peace and security.

KEYWORDS:

International Law, Jurisdiction, Legal Disputes, Peaceful Settlement, State Parties, Treaty Interpretation.

1. INTRODUCTION

The administration of justice and the oversight of the rule of law on a global scale are the main goals of the International Court of Justice. The main judicial body of the United Nations is the Court, which has its headquarters in the "Peace Palace" in The Hague, Netherlands. It started working in 1946, taking over for the Permanent Court of International Justice, and it follows a similar set of rules. Cases presented by nations and the Security Council may be heard by the Court. It may be asked for advisory views by the UNGA, ECOSOC, and other particular institutions. Cases cannot be brought before the court by an individual. Haya de la Torre, Nottebohm, Barcelona Traction Light and Power Company, the Orders on Requests for the Indication of Provisional Measures in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide, and the Case Concerning Avena and Other Mexican Nationals are just a few of the human rights cases the ICJ has ruled on. In its advisory opinions, the Court has also discussed topics related to human rights, such as genocide, apartheid, and the immunity of UN special rapporteurs on human rights[1], [2].

The Former Yugoslavia International Criminal Tribunal

On May 25, 1993, the Security Council adopted Resolution 827, which created the International Criminal Tribunal for the Former Yugoslavia. The Tribunal was established in reaction to the grave breaches of international humanitarian law that have been occurring since 1991 on the territory of the former Yugoslavia, as well as the danger that these crimes constitute to global peace and security. The ICTY's goals are to: a) prosecute those allegedly responsible for grave breaches of international humanitarian law; b) compensate victims; c) prevent future crimes; and d) help restore peace by fostering amity in the former Yugoslavia.

Investigating, charging, and punishing people for the following crimes perpetrated on the territory of the former Yugoslavia since 1991 will accomplish these goals[3], [4].

Grave violations of the 1949 Geneva Conventions, infractions of the rules or customs of war, genocidal acts, and crimes against humanity are only a few examples. When major international humanitarian law breaches occur in the former Yugoslavia, the ICTY and national tribunals have concurrent jurisdiction. The ICTY may assert supremacy over national courts and assume control of national investigations and procedures at any time if doing so is determined to be in the interests of international justice16 permanent judges and a maximum of nine ad litem judges make up the ICTY Chambers. The UN General Assembly elects the permanent judges for a four-year term, with the option of reelection. The judges, who come from the world's major legal systems, are split among three Trial Chambers and one Appeals Chamber. After hearing evidence and legal arguments, they render judgment on the accused's guilt or innocence and impose a punishment. Additionally, they create and adopt the legal documents that govern how the ICTY operates, such as the Rules of Procedure and Evidence.As of July 2004, 102 accused have participated in Tribunal hearings. Since many of the legal questions decided by the Tribunal have never been legally addressed before or have remained dormant since the Nuremberg and Tokyo trials, the Tribunal's decisions have established significant precedents of international criminal and humanitarian law. The Hague, Netherlands, is home to the Tribunal[5], [6].

Rwandan International Criminal Tribunal

By Resolution 955 of the 8 November 1994, the UN Security Council established the International Criminal Tribunal for Rwanda to try those accountable for the 1994 Rwandan Genocide and other serious violations of international humanitarian law. Rwandan citizens accused of committing similar crimes in neighboring nations at that time may likewise be prosecuted by the ICTR.The Tribunal was established, among other things, to support Rwanda's process of national reconciliation and the upkeep of regional peace. The Chambers, the Appeals Chamber, the Office of the Prosecutor, and the Registry make up the Tribunal. The UNGA chooses the judges for the Tribunal, who must represent several ethnicities. Seven judges make up the Appeals Chamber, which is shared with the ICTY, while three judges sit in each of the Trial Chambers. An independent, autonomous entity known as the Office of the Prosecutor conducts investigations into offenses that fall within the purview of the Tribunal, drafts charges, and brings cases against suspects.

The Tribunal's general management is overseen by the Registry. The Trial Chambers and the Prosecution get judicial and legal assistance from the Registry, which is managed by the Registrar. More than 230 witnesses from various nations have testified before the Tribunal too far.

The Tribunal has a dedicated Witness and Victims assist Section whose job it is to safeguard the protection of witnesses as well as to assist them and relocate them if necessary. The Tribunal has pushed for victim-centered, rehabilitative justice by, among other things, offering victims' legal advice, medical attention, and psychiatric counseling. As of July 2004, the Tribunal has successfully prosecuted numerous leaders and obtained the arrest of more than 50 people connected to the 1994 Rwandan massacre.

Twenty-one defendants were the subject of fifteen verdicts, while another twenty-one are now awaiting trial. The Tribunal has rendered decisions on almost 500 motions and other points of law, setting out significant international legal concepts that will act as models for subsequent international criminal courts. United Republic of Tanzania's Arusha serves as the Tribunal's headquarters[7], [8].

Intergovernmental Criminal Court

The Rome Statute of the International Criminal Court was approved at a UN diplomatic conference on July 17, 1998, creating a permanent international criminal court with The Hague, Netherlands, as its headquarters. The fruitless efforts to build up an international tribunal after the First World War gave rise to the concept of a permanent court. The Nuremberg and Tokyo war crimes courts established after the Second World War sparked proposals to establish a permanent court. When the Convention on the Prevention and Punishment of the Crime of Genocide was adopted, it was first discussed at the UN level. Differences of opinion effectively delayed further improvements for a long time. The UNGA finally instructed the International Law Commission to write a law for an international criminal court in 1992. The Security Council's creation of the International Criminal Tribunals for Rwanda in 1994 and the Former Yugoslavia in 1993 generated more public attention. A special committee comprised of representatives from all UN Member States and UN Specialized Agencies was constituted by the UNGA in December 1994 to examine the final draft of the International Law Commission's statute. In order to "discuss further the major substantive and administrative issues arising out of the draft statute prepared by the International Law Commission and to draft texts, with a view to preparing a widely accep consolidated text of a convention for an international criminal court as a next step towards consideration by a conference of plenipotentiaries," the UNGA established the Preparatory Committee in December 1995. The 13-part, 116-article draft law for the ICC was presented for discussion by the Preparatory Committee. The Diplomatic Conference accepted the Statute for the Court after five weeks of discussion with a vote of 120 in favor to 7 against and 21 abstentions. 94 nations are parties to the Statute as of July 2004.

2. DISCUSSION

As stated in the Statute, the Statute established the ICC as a permanent entity with the authority to exercise jurisdiction over individuals for the most severe crimes of international concern. The ICC's jurisdiction is supplementary to that of individual countries' criminal courts. The Statute, which outlines the Court's jurisdiction, organization, and duties, came into effect on July 1, 2002, after ratification or accession by 60 states. The four kinds of crimes that fall within the Court's substantive jurisdiction are genocide, war crimes, crimes against humanity, and offenses against the ICC's administration of justice. The crime of aggression is addressed in Article 5 of the Rome Statute, but the Rome Conference participants were unable to come to an agreement on the crime's definition, its constituent parts, or the Security Council's involvement in its prosecution. Persons under the age of 18 are not subject to the Court's jurisdiction. Both the UN Security Council and the Court may be informed of a situation by States parties. Additionally, the Prosecutor has the authority to launch an investigation on its own. When the state whose territory the crime was committed or the state of the accused's nationality is a party to the Rome Statute, the Court may exercise its jurisdiction over a particular case. On a case-by-case basis, non-party states may also consent to the Court's jurisdiction.

Regardless of whether the state in question is a party to the Statute, the Security Council may also submit issues to the Court.The 60th state accepted the Rome Statute of the International Criminal Court on April 11, 2004, and it went into effect on July 1 that same year. The worldwide community has now started to complete the ICC's construction. For instance, the Rules of Procedure and Evidence and the Elements of Crimes, the two primary accessory documents to the RS, were approved at the first session of the Assembly of States Parties to the RS in September 2002. These documents enable the Prosecutor and the Judges to look into, pursue, and try the worst crimes of international concern. Additionally, the ICC's top

leaders have been chosen. The first seat of the Court was chosen by the ASP in February 2003, and as required by the RS, regional representation, gender equality, and diversity in legal skill were all ensured. Four of the 18 chosen judges are from the Group of Western European States and Others, seven are, three are from the African States Group, three are from the Asian States Group, and one is from the Eastern European States Group. Eight of the judges are recognized authorities in international law, international humanitarian law, and international human rights law, while ten of the eighteen judges have familiarity in criminal law and criminal procedure. For the first time, the gender viewpoint was required in the selection of judges for an international tribunal, which led to the election of seven women and eleven males. Additionally, towards the middle of 2003, the ASP chose Dr. Luis Moreno Ocampo, a seasoned Argentinean attorney and former deputy prosecutor for the country's military juntas, to serve as the ICC's prosecutor.

Following his election, Serge Bremmetz was chosen from a list of three applicants for the job of Deputy Prosecutor, and he took office in September 2003. The justices considered a list of applicants created and provided to them by the ASP before choosing Mr. Bruno Cathala to serve as the Court's Registrar. The election for the post of Deputy Prosecutor, which will take occur in September 2004 at the third ASP, is the only one of the ICC's top officials yet to be decided. The ICC is prepared to begin looking at cases of genocide, crimes against humanity, and war crimes now that the key players are in place. More than 500 messages from non-governmental organizations, individuals, and victim advocacy groups have been submitted to the prosecutor since July 1, 2002, outlining situations that may qualify as crimes within the Court's purview. In accordance with Article 13 of the Rome Statute, the governments of Uganda and the Democratic Republic of the Congo, respectively, referred cases to the Court in December 2003 and March 2004, respectively. The two nations mentioned circumstances that would qualify as crimes within the ICC's jurisdiction.

In a special proclamation, both nations gave the prosecutor the go-ahead to look into any crimes that may have been committed as of July 1, 2002, on their respective soils or by their citizens, regardless of whether those people were part of their respective armies or other armed forces. A set of guiding principles for the Prosecutor's policy for the investigation and prosecution may be found in the Paper on Some Policy Issues before the Office of the Prosecutor and its Annex, which was recently released by the ICC Prosecutor. According to the Paper, the Court has jurisdiction over the worst crimes of international significance, which are recognized as such because to their seriousness and the degree of participation of the alleged offenders. The Office of the Prosecutor will look into and bring cases against high-ranking members of governments and other political parties since they are most accountable. The Prosecutor expresses its willingness to advise and support states that are willing to fight impunity and fill the "impunity gap" that the ICC's limited jurisdiction over those who bear the greatest responsibility could create. Nevertheless, the Prosecutor reminds states of their primary responsibility to investigate, prosecute, and punish genocide, crimes against humanity, and war crimes[9], [10].

United Nations Commissions that are effective

In 1946, ECOSOC Resolution 11 created the Commission on the Status of Women. It is the primary UN body in charge of problems affecting women. Its task is to compile reports on issues pertaining to the advancement of women's rights in the political, economic, social, and educational spheres for the ECOSOC. The CSW may also advise the ECOSOC on issues pertaining to women's rights that need urgent action. The CSW is the venue for reviewing how the Fourth World Conference on Women in 1995 in Beijing was carried out. The Commission served as the preparatory committee for the World Conferences on Women that

were held in Beijing, Mexico, Copenhagen, and Nairobi. The Commission is made up of 45 states chosen by the ECOSOC for a four-year term on a regional basis to ensure equal geographic representation. The Commission has an eight-day yearly meeting in New York.The Division for the Advancement of Women, a unit of the Division for Social Policy and Development, should be mentioned as it serves as the hub for all initiatives involving women. Its programs are focused on keeping an eye on the "Forward-Looking Strategies" created during the World Conferences. The DAW serves as the secretariat for both the CEDAW Committee and the CSW. Specifically on the main subjects chosen by each CSW session, the DAW also conducts and coordinates research, expert group meetings, and advisory seminars.

The Social Development Commission

Another useful commission of the ECOSOC is the Commission on Social Development. It was first established in 1964, but its mandate was subsequently revised once the membership was extended to 32. The number of members increased once more to 46 in 1996. On matters relating to social welfare and the most disadvantaged sections of society, the Commission provides advice to the ECOSOC. In order to promote an integrated approach to social and economic development that is founded on social justice and the distribution of power, responsibility, and prosperity among all segments of society, it is especially active in areas beyond the purview of the UN Specialized Agencies. The Commission's work program has benefited greatly from the Declaration on Social Progress and Development, which the UNGA endorsed in 1969.

The Commission on Criminal Justice and Crime Prevention

The body on Crime Prevention and Criminal Justice is another body that was created by the ECOSOC in 1992. The primary responsibilities of the Commission are in the area of international cooperation on prison and criminal issues, including criminal justice and crime prevention. Promoting respect for human rights is another important component of the Commission's work plan. The Commission has yearly ten-day meetings in Vienna. The UN conferences on crime prevention and the care of offenders are prepared in large part by the Crime Commission. These conferences are conducted every five years. Therefore, it sometimes crosses over into the area of human rights in its activities. A Declaration on the Protection of All Persons against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for instance, was written during the fifth conference while Standard Minimum Rules for the Treatment of Prisoners were developed at the first conference. The UNGA endorsed the Declaration the same year. Bangkok will play host to the eleventh Congress on the Prevention of Crime and the Treatment of Offenders in 2005.

The Commission of International Law

The UNGA created the International Law Commission in 1947 by Resolution 174, and its job is to encourage the growth and codification of international law. In areas where international law has not yet evolved or has not matured enough, it writes conventions or makes required adjustments. The Commission is composed of 34 persons with a track record in international law but who are not government officials. They are chosen for a five-year term by the UNGA from a list of candidates put up by the UN member states.In terms of human rights, the Commission participates in the creation of international accords on issues like nationality and statelessness, among other things. Additionally, the Commission spends a lot of effort creating international criminal law. The approval of the International Criminal Court Statute is one of the Commission's most recent endeavors.

Standards and control systems

In the area of defining standards, the UN has a dominant position. Human rights standards are often drafted by the UN Commission on Human Rights, typically in collaboration with the Sub-Commission. Mandatory working or drafting groups might appear from time to time. Understanding that components for new instruments are often derived from proposals by one nation, from final texts of colloquia and round meetings, and particularly from submissions by NGOs, is vital. The method is not standardized. Texts may now be submitted for technical assessment by lone experts or expert groups. Additionally, following a first reading, texts are often sent to governments for feedback. Following this, in a second reading method, any unresolved concerns are addressed. Drafts are sent to the ECOSOC and UNGA after being approved by the UN Commission on Human Rights.

The process of writing texts may be highly difficult and is not always guaranteed to go well. For instance, it took almost fifteen years to design the ICCPR and the ICESCR, while the Convention on the Rights of the Child, one of the most recent treaties, took over 10 years to finish. UNGA Resolution 41/120 provides guidelines for writing and states that only suggestions with broad support and that are clear, significant, and consistent should be taken into consideration. Within their purviews, the CSW and the Crime Commission also participate in standard-setting. For example, the CSW created the CEDAW Optional Protocol.In the last fifty years, a broad variety of methods have been built inside the UN system to monitor conformity with the standards developed. The contrast between charter-based processes, like the appointment of special rapporteurs, and treaty-based procedures, like the Human Rights Committee, is established in the overview that follows.The Universal Declaration of Human Rights, which together with the Covenants constitutes the Universal Bill of Human Rights and is regarded as the major human rights standard despite the fact that, as a declaration, it is not accompanied by a specific supervisory procedure, must be mentioned before discussing the treaties.

Treaties And Protocols Based on Treaties

These conventions each have a governing body. These organizations are made up of many professionals with high moral standards and established qualifications in the area of human rights. Even though they are often citizens of a state party to the in-issue treaty, they operate on their own initiative and do not follow orders from their own governments. The processes developed within the framework of a particular human rights treaty are known as treaty-based procedures. The first universally applicable human rights pact to provide a system for oversight was the Convention on the Elimination of All Forms of Racial Discrimination. Later, additional human rights agreements, most notably the International Covenant on Civil and Political Rights, used this system as a model. With the exception of the Committee on Economic, Social, and Cultural Rights, the treaty bodies receive their status from the relevant agreement. Regular meetings of states parties are conducted to debate problems pertaining to the conventions, primarily those related to the election of members to the treaty bodies, in order to execute these conventions. There are several kinds of reporting processes, interstate complaint methods, individual complaint procedures, and inquiry procedures, as was indicated in Part I.The Committee on Economic, Social, and Cultural Rights and the ICESCR.

By UNGA Resolution 2200 A on December 16, 1966, the International Covenant on Economic, Social, and Cultural Rights was formally established. It became effective on January 3, 1976. 149 states have ratified the Convention as of July 2004.The Covenant's Preamble acknowledges, among other things, that civil, political, and economic rights all

flow from the "inherent dignity of the human person" and that "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 civil, political, and economic rights." The Covenant recognizes the right to work, the right to just and favorable working conditions, the right to form and join trade unions, and the right to strike. It also recognizes the right to social security, including social insurance, the right to protection and assistance for the family, and the prohibition of child labor. It also recognizes the right to an adequate standard of living for oneself and one's family, including adequate food, clothing, and housing, as well as the right to the continuous improvement of living conditions.

The Committee on Economic, Social, and Cultural Rights is the organization in charge of monitoring the ICESCR. The Committee serves as an advisory body to the ECOSOC, which is in charge of overseeing the Covenant's implementation. This task was originally assigned to a working group of government specialists by the ECOSOC. To transform the working group into a Committee on Economic, Social, and Cultural Rights, the ECOSOC made this decision in 1985. The Committee is composed of 18 professionals working on an individual basis. A list of candidates submitted by the states parties to the Covenant serves as the basis for the secret ballot election of members of the ECOSOC. Voting rights are extended to ECOSOC members who are not Covenant parties. Members of the Committee are chosen at large for four-year terms and are eligible for reelection. The Committee typically convenes twice a year for three-week long sessions in Geneva. Public meetings are held. The Committee submits reports to the ECOSOC and has the option to provide suggestions. On January 1, 1987, the Committee officially began performing its tasks.

The reporting method is the only supervisory instrument envisioned under the ICESCR. States that have ratified the Covenant are expected to provide the UN Secretary-General with reports on the implementation of the rights outlined in the Covenant, who then sent them to the ECOSOC. Reports must be examined by the Committee on Economic, Social, and Cultural Rights. All items must be addressed within the reporting cycle of five years.The Committee has also held 'days of broad debate' since 1992, which have resulted in the approval of a number of broad Comments among other things. The Committee has so far approved 15 General Comments. The adoption of an optional protocol that includes a personal complaint process is now a hot topic of debate.

The Human Rights Committee and the ICCPR

By UNGA Resolution 2200 A on December 16, 1966, the International Covenant on Civil and Political Rights was officially ratified. It becomes effective on March 23, 1976. 152 states have ratified the Convention as of July 2004.Article 1, which guarantees the right to self-determination, is the sole article in Part I of the Covenant and is also Article 1 of the ICESCR. Articles 2 and 5 of Part II of the Covenant discuss the nature of obligations, the territorial and individual reach of the Covenant, and the principle of non-discrimination. Article 3 of the Covenant ensures that men and women are treated equally in the exercise of their Covenant rights. Article 4 permits states to take actions that are in violation of the Covenant's requirements, but Article 5 sets a limitation on the abuse of rights and a saving clause. The Human Rights Committee, which should not be confused with the UN Commission on Human Rights, is the oversight body created under the ICCPR. The Committee is a body created under the ICCPR's Article 28. It is composed of 18 specialists who are personally chosen by the state’s signatories to the Covenant for a four-year term. The Committee has three three-week meetings every year. The Committee is in charge of monitoring the Covenant's observance. Under the ICCPR and its First Protocol, the following control methods are available.

3. CONCLUSION

In conclusion, in a world characterized by international conflicts and the need for a legal framework to resolve them, the article emphasizes the International Court of Justice's continuous relevance and significance. It highlights the ICJ's dedication to the values of justice, equality, and the rule of law, which remain crucial in fostering friendly, cooperative international relations. In a world characterized by international conflicts and the difficulties of global governance, the International Court of Justice (ICJ) serves as a ray of hope. This essay has examined the ICJ's diverse function, scope of authority, and relevance in the context of international law and diplomacy, emphasizing its contributions to the amicable settlement of international conflicts. As the main court of the United Nations, the ICJ is essential to maintaining the rule of law in international affairs. Its activities, such as advisory opinions and disputed cases, provide as crucial conflict resolution processes and as a source of legal advice on complicated topics. The Court's rulings, which are based on fair principles and international law, have significant ramifications for world peace and security.

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CHAPTER 12

EXPLORING THE COMMITTEE AGAINST TORTURE ORIGINS

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ABSTRACT:

The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) and the Committee against Torture (CAT Committee) constitute a pivotal framework in the global effort to eradicate torture and ill-treatment. This paper explores the CAT's origins, principles, and implications for the prevention and prosecution of torture. It also delves into the role and functions of the CAT Committee, an expert body tasked with monitoring state parties' compliance with the treaty. Through an in-depth analysis, this study examines the impact of the CAT in advancing human rights and combatting torture, highlighting its significance in a world where the absolute prohibition of torture remains a fundamental moral and legal imperative.The abstract underscores the central importance of the CAT in the fight against torture and other forms of cruel, inhuman, or degrading treatment. It acknowledges the role of the CAT Committee in holding states accountable for their obligations under the treaty and promoting transparency in the prevention and prosecution of torture.

KEYWORDS:

CAT Committee, Human Rights, Non-Governmental Organizations, Prevention, Reporting, State Parties.

1. INTRODUCTION

One year after the Covenant takes effect for them, all states parties to it are required to submit a report outlining the steps they have taken to put into practice the rights outlined in the Covenant and the progress achieved in exercising those rights. Also mandated by the Committee is the five-year report submission requirement for each state party.The process is not required. No party to the Covenant has used the method so far, in part because the majority of nations that routinely violate human rights have not acknowledged the competence of the Committee in this regard and in part because the approach is political in character[1], [2].

Mechanism for individual complaints

The state in question must be a party to the Protocol in order to use this complaints process. Articles 2 to 5 of the Protocol, which, among other things, states that the Committee will make its conclusions known to the state in question and to the complaint, govern the major features of the process. Over 1,200 different instances have received opinions from the Committee. The opinions are made public in a way that resembles a judgment in many ways and might be seen as "case-law" of the Committee. The position of Special Rapporteur for the Follow-Up of Views was established by the Committee in 1990. The Committee adopted a follow-up fact-finding procedure in 1995, and it was first used in 1995 on a trip to Jamaica.

The Committee has a proven track record of thoroughly reviewing national reports and individual complaints. Representatives of the state being considered have the opportunity to discuss the country report in a public session. The Committee's members then get a chance to

ask the representatives questions, which they sometimes do in a tough and critical way. NGOs have started to take an important part in the process over time.

The ICCPR also permits the Committee to make General Comments on the reports it has examined. The Committee has made very innovative use of these capabilities by releasing a number of General Comments throughout the years that contain a thorough justification and clarification of several significant Covenant provisions. More than 30 General Comments that are related to the knowledge gathered about specific articles and provisions of the Covenant were approved in 2004.The Committee for the Elimination of Racial Discrimination and the CERD. UNGA Resolution 2106 A, passed on December 21, 1965, officially ratified the International Convention on the Elimination of All Forms of Racial Discrimination. It becomes effective on January 4th, 1969. 169 states were a member of the Convention as of July 2004.

To avoid discrimination based on race, color, origin, or national or ethnic background, the CERD provides a variety of specific prohibitions and requirements. The Convention specifically forbids propaganda and the advocacy of prejudice and condemns both racial segregation and apartheid. Additionally, non-discrimination in regard to certain rights is outlined, including the right to marriage, the right to housing, and the freedom of speech and opinion. States agree to eradicate preconceptions that give rise to racial discrimination, and they also promise to provide adequate protection and remedies against such actions[3], [4].

The Convention calls for the establishment of a Committee on the Elimination of Racial Discrimination, which would be composed of 18 experts chosen by state parties to the Convention to serve terms of four years. It may be troublesome since a session has sometimes been postponed due to a shortage of funding because the body is the only body where states parties cover the expenditures. Every year, the Committee has two three-week meetings in Geneva.The following are the monitoring systems that the CERD has in mind:

a) A reporting system. The reports that the states submit to the Secretary-General about the legislative, judicial, administrative, or other actions they have taken to implement the Convention's provisions shall be taken into consideration by the Committee. After the concerned state's entrance into force with the Convention, these reports must be filed one year later, then every four years or whenever the Committee demands them. The Committee has the right to ask the states for further details. The Committee submits an annual report on its work to the UNGA via the Secretary General, and on the basis of its review of the reports and material it has received, it may provide ideas and broad recommendations. The CERD's reporting system has evolved into its most crucial monitoring method. Again, it should be mentioned that NGOs began to play a big part in the process over time.

b) An interstate complaint process. A state party may bring an issue to the Committee's notice if it believes that another state party is not implementing the Convention's requirements. The communication will be sent by the Committee to the relevant state. The recipient state must provide the Committee with a written justification or statement outlining the issue and any remedies they have chosen, if any, within three months. When the Committee has gathered all the data it deems pertinent to the dispute, as described in Articles 12 and 13, the chairman of the Committee shall constitute an ad hoc Conciliation Commission. The concerned nations shall have access to the Conciliation Commission's good offices in an effort to resolve the issue amicably and in accordance with the Convention. There haven't been any interstate complaints to yet, thus the conciliation system hasn't ever been put into use.

b) A system for individual complaints. The Article recognizes, on an optional basis, the right of petition by a person or group of people. About 40 states have chosen to participate. By the

middle of 2004, the Committee had examined 30 instances and made recommendations. Within six months of exhausting all local remedies, a person has the right to transmit a problem to the Committee if the state party in question has recognized the right to petition. The message will be brought to the accused state's notice by the Committee. The impacted state will have three months to provide the Committee with written justifications. The petitioner and the state in question must receive the Committee's suggestions and recommendations, if any.Committee for the Elimination of Discrimination Against Women (CEDAW) and. By UNGA Resolution 34/180 on December 18, 1979, the Convention on the Elimination of All Forms of Discrimination Against Women was ratified. It became effective on September 3, 1981. As of July 2004, 177 states were parties to the Convention, many of which had several objections that seriously limited the Convention's efficacy.

The Convention's broad standards are included in Part I. Different steps that governments take to end discrimination against women and guarantee their full growth and progress are outlined in Articles 2 and 3 of the Constitution. Adopting the right legal measures and abstaining from discriminating against women are two examples of these measures. Article 4 states that "affirmative action" and protections for mothers won't be viewed as discriminatory, and Article 5 mandates that states take all necessary steps to change cultural norms that support discrimination and make sure that family education emphasizes mothers as social roles. States finally promise to stop exploiting and trafficking women for prostitution. States are required to take action to end prejudice in a few specific professions, according to Part II. States are required to provide women with the same rights as males, including involvement in politics and public life, the chance to represent their countries abroad, and the ability to change and keep their nationality as well as that of their children. States are required to take appropriate action to end discrimination in relation to a number of social and economic issues, including education, employment, and on the basis of marriage and parenthood, health, and the right to benefits and loans as well as the opportunity to engage in cultural activities, according to Part III of the Convention.

The specific issues that rural women confront and the steps that governments take to end prejudice against this group are also taken into consideration. Part IV promotes equality before the law and mandates that governments take action to end discrimination in marriage and other family-related matters.

The Committee for the Elimination of Discrimination Against Women is tasked with monitoring worldwide adherence to the Convention under Article 17 of the Convention. There are 23 specialists on the Committee, each of whom is participating individually. The states parties to the Convention choose the members for a four-year term. The CEDAW Committee keeps in regular touch with the CSW, the UN Specialized Agencies, and the other Committees established in accordance with the requirements of the UN human rights treaties. The reporting system is the sole supervisory mechanism created by the Convention itself. Each state party is obligated by Article 18 of the Convention to report to the CEDAW Committee on the steps they have taken to abide by the treaty within a year of its adoption. Consequently, a periodic report is required every four years. Although the government is in charge of writing the reports, NGOs may also participate to provide the most comprehensive picture of the condition in the nation. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women was approved by the UNGA on October 6, 1999.

The Optional Protocol becomes effective on December 22, 2000. There were 60 parties to the Optional Protocol as of July 2004.Two more monitoring techniques are included in the Optional Protocol.

a) A system for individual complaints

Through this process, the Committee might receive complaints from specific women or groups of women alleging abuses of their rights as guaranteed by the Convention. According to the Protocol, a number of requirements must be satisfied before a communication may be accepted for consideration by the Committee, including the exhaustion of all available domestic remedies. The Committee has two cases pending as of July 2004.

a) The investigative process

The Protocol lays up a special investigative process that allows the Committee to open investigations into instances of severe or persistent violations of women's rights and conduct foreign visits. The Protocol has a 'opt-out provision' that allows governments to indicate that they do not accept the inquiry mechanism, which is comparable to that established in the Convention against Torture, following ratification or accession. The first investigation case is almost finished as of July 2004.

2. DISCUSSION

States express their aim to "make the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world more effective" in the Preamble to the Convention against Torture and Other Cruel, Inhuman or humiliating Treatment or Punishment. States parties agree to adopt strong legislative or other controls to prohibit acts of torture and to ensure that neither a state of emergency nor higher authority may be used as an excuse for torturing someone. States commit to making ensuring that acts of torture are criminally sanctioned and that deportation or refoulement are forbidden where there is a chance that they would result in torture. The Universal Jurisdiction Clause of the Convention on the Prevention of Torture requires States Parties to Establish Jurisdiction over Torture Offences Committed by, on, or Against Their Nationals. States Parties are also required to Establish Jurisdiction in cases where the Torture Offender is on their Territory or within their Jurisdiction and they do not Extradite. States parties promise to cooperate and agree to detain suspected criminals, conduct investigations, bring charges, and extradite them. According to Article 10, governments are required to make sure that law enforcement officers and other persons engaged in the care of people deprived of their liberty get training on the prohibition of torture. States must take preventative steps, such as evaluating the standards of questioning, conducting an early and impartial inquiry, and ensuring that victims of torture get recourse and compensation. Last but not least, Article 15 stipulates that statements obtained by torture may not be used as evidence in any proceedings. A Committee of 10 impartial experts is tasked with monitoring adherence to the Convention under Article 17 of the CAT. The parties to the Convention elect the experts for a term of four years. 'Equi geographic distribution' is taken into consideration while making their choice. The Committee, which met for two weeks in Geneva on November 26, 1987, now meets twice a year. In addition to its oversight role, the Committee has created an Optional Protocol to the Convention allowing it to visit detention facilities under the control of governments parties to the Protocol. Although four governments have ratified the Protocol, it has not yet come into effect[5], [6].The following are the CAT supervision mechanisms.

a) The concerned state's government is required to provide the Committee a written report detailing the steps it has taken to carry out its commitments under the Convention within a year of the Convention taking effect for that state. Every four years, it must provide addenda detailing new actions done as well as any additional reports the Committee may seek. In its annual report to the UNGA and the nations parties to the Convention, the Committee may

make General Comments on the country reports. The involved governments may react on the remarks and add their own opinions.

b) According to the Article, the Committee may consider communications made by a state party to the Convention alleging that another state party has failed to uphold its commitments under the Convention. It is a voluntary process that may only be started if both parties have signed a statement recognizing the Committee's authority over them.

c) The Article has procedures for handling complaints made by private parties. The state party to the Convention against whom the complaints are being brought must have acknowledged the right to complain before this process may begin. The processes are identical to those of the ICCPR and its First Optional Protocol in terms of their aspects. More than 200 cases have been decided as of July 2004.

d) The Committee may designate one or more of its members to conduct a private inquiry if it receives credible evidence indicating "well-founded indications" that torture is "being systematically practiced" in a state that is a party to the Convention. With permission from the host nation's administration, it may go there. The Committee delivers the government its findings along with any suggestions or criticisms. The work done by the Committee during the investigative phase is private. On the other hand, when an inquiry is over, the Committee may opt to add a short summary of the outcomes of its work in its annual report. This penalty can support the Committee's stance when negotiating with the relevant authorities. A state that is a party to the Convention, nonetheless, has the right to reject the application of Article 20. Seven investigations have been carried out as of July 2004.On November 20, 1989, the UN General Assembly passed Resolution 44/25, ratifying the Convention on the Rights of the Child. It becomes effective on September 20, 1990. As of July 2004, 192 nations were party to the Convention, making it the human rights pact with the most ratifications[7], [8].

A kid is defined under the Convention on the Rights of the kid as anybody less than 18 years old, unless legal majority is reached earlier. The Convention outlines the principles of non-discrimination and that the child's best interest should come first in all decisions involving children. States are required to implement the Convention's rights while respecting the parental rights and responsibilities to provide the child with the necessary direction and guidance while exercising those rights. The Convention outlines economic, social, and cultural rights in addition to civil and political rights. These rights include the right to life, the right to a name and nationality, the right to preserve one's identity, the freedom of expression, opinion, thought, and religion, the freedom of association and assembly, the right to privacy, the right to information, the right to health, the right to social security, and the right to a living that is adequate. The Convention also requires nations to support family reunion and forbids child separation from parents unless there are extraordinary circumstances.

States parties commit to taking extra steps to stop the illegal transfer and non-return of children abroad; to protect children from abuse or neglect; to provide special protection if they are taken away from their families; to make sure that the best interests of the child come first in adoption systems; to protect children from economic exploitation and hazardous work; to protect children from sexual exploitation and abuse; to protect children from drug abuse; and more. Additionally, some groups are given special protection, such as refugee children, children with disabilities, children from minority groups, and children from indigenous populations. A Committee on the Rights of the Child is established under Article 43 of the CRC. The Committee met for the first time in 1991 in October. The Committee now comprises of 18 specialists who were chosen for a four-year term, up from its initial membership of 10. Geographical dispersion and major legal systems are taken into

consideration during the election. The Committee has three three-week meetings a year in Geneva. Its duty is to monitor the CRC's implementation, mostly via a reporting system[9], [10].

The reporting system created by CRC Article 44 is the sole supervisory instrument in place. The first report must be provided within two years following the relevant state party's ratification of the Convention. Thereafter, reports must be submitted every five years. The Committee provides the UNGA with reports every two years and is open to ideas and broad recommendations. The Committee established broad recommendations for the structure and substance of first reports at its first meeting. The definition of a child under national law, the application of general principles, and paragraphs on family environment and substitute care, fundamental health, education, and specific protective measures are all required to be included in this report.

Two further Optional Protocols to the Convention on the Rights of the Child, including the involvement of children in armed conflict and the sale of children as well as child prostitution and child pornography, were approved on May 25, 2000. On February 12, 2002, the Optional Protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child came into effect. 73 nations were signatories to this convention as of July 2004. The Protocol forbids governments and other organizations from enlisting minors in their military services. It mandates that nations raise the minimum recruiting age above the CRC-set limit, take all reasonable measures to prevent minors from directly taking part in hostilities, guard against the voluntary recruitment of minors, and report to the CRC Committee on their compliance with the Convention's and the Protocol's provisions.

On January 18, 2002, the Sale of Children, Child Prostitution, and Child Pornography Optional Protocol to the Convention on the Rights of the Child came into effect. 79 nations were signatories to this convention as of July 2004. It adds specific guidelines for criminalizing breaches of children's rights related to the sale of minors, child prostitution, and child pornography to the Convention on the Rights of the Child. The Protocol outlines the crimes of "child pornography," "child prostitution," and "sale of children." It establishes guidelines for how domestic law infractions should be handled, not simply in terms of the offenders but also in terms of victim protection and proactive measures. Additionally, it provides a framework for greater global cooperation in these areas, particularly with regard to the prosecution of criminals. was approved on December 18, 1990, by UNGA Resolution 45/158. It took thirteen years until it became effective on July 1st, 2003. 26 states were a member of the Convention as of July 2004.

The Convention is divided into two parts: Part I contains definitions, and Part II contains the nondiscrimination concept. the freedom of movement, the right to life, the prohibition of torture, the prohibition of slavery or forced labor, the freedom of thought, conscience, and religion, the freedom of opinion and information, privacy, property, liberty, and security, humane treatment under detention and fair trial, equality before the courts, nullum crimen, nulla poena sine previa lege, the right not to be imprisoned for debt, and the right to consular access are all included in Part III. The Convention also establishes guidelines for the removal of migrant workers and their families and forbids the destruction of migrant workers' identifying papers. Additionally, it provides unique provisions for migrant worker children that establish their entitlement to an education as well as their rights to a name, a birth certificate, and a nationality. The Convention further states that migrant workers have a right to information about their rights under the Convention and that they cannot be treated less favorably than citizens in terms of compensation. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families oversees the Convention.

According to the convention's process, the Committee is made up of 10 experts. On December 11, 2003, states parties gathered for the first time to elect the Committee's members. The number of experts serving on the Committee will expand from 10 to 14 if 41 states have ratified the Convention.The Convention sets forth a set of legally binding international standards to address the treatment, welfare, and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities on the parts of sending and receiving states. It seeks to prevent and eliminate the exploitation of migrant workers throughout the entire migration process. It specifically aims to stop the unlawful or covert recruiting of migrant workers as well as their trafficking, as well as to deter the employment of migrant workers who are irregular or unauthorized.The following list represents the CMW oversight mechanisms:

a) A reporting system. States parties undertake the responsibility of reporting on the actions they have taken to implement the Convention within a year of the state in question becoming a party to it, and then every five years after that. The reports are anticipated to detail any implementation-related issues as well as give data on migration patterns. The Committee will provide any remarks it may deem pertinent to the state party in question after reviewing the reports.

b) Communications between nations. A state party may acknowledge the Committee's authority to hear communications from another state party charging that the first state isn't upholding the Convention's requirements. Only states parties that have recognized this competence may send such messages. The Committee may offer its good offices in an attempt to find a cooperative resolution, but it will only take action on a subject that has been presented to it in this manner after all domestic remedies have been exhausted. For this process to take effect, ten state parties must make declarations. No state party has made such a statement as of July 2004.

(c) Private conversations. The Committee's ability to accept and examine messages from or on behalf of people who reside in that state's jurisdiction and assert that their rights under the Convention have been infringed may be acknowledged by a state party. Only communications involving a state party that has acknowledged this competence may be received. If the Committee determines that all available domestic remedies have been exhausted and that the issue has not been and is not now being addressed in another international setting, it may request answers and express its opinions. For this process to take effect, ten state parties must make declarations. No state party has made such a statement as of July 2004.

There is no explicit human rights treaty that supports this oversight mechanism. The processes are referred to as "charter-based procedures" since they were created by resolutions of the Economic and Social Council and are therefore ultimately based on the United Nations Charter. The United Nations has been the target of charges of human rights abuses by people, groups, and non-governmental organizations ever since it was founded. In the beginning, the United Nations' member states did not provide the organization the authority to handle such complaints. The Economic and Social Council approved a resolution on July 30, 1959, cementing the situation as it had evolved since 1947. The Commission on Human Rights requested that the Secretary-General of the United Nations compile and provide two lists, the first of which was a non-confidential list of all communications received that dealt with the general principles involved in the promotion and protection of human rights, and the second of which was a confidential list provided in a private meeting that provided a brief summary of the content of other communications. A copy of the message was to be sent to the specific state being discussed in it, along with a request for a response, if one was desired. But from

the victim's point of view, this treatment only brought about a little solace. In the ECOSOC resolution, the Secretary-General was only instructed to "inform the writers of all communications concerning human rights that their communications will be handled in accordance with this resolution, indicating that the Commission has no authority to take any action with regard to any complaints concerning human rights.The United Nations and its member nations' attitudes toward handling human rights infractions underwent substantial shifts in the 1960s. The ECOSOC was asked by the General Assembly in 1966 to urgently study methods to strengthen the UN's ability to put an end to human rights breaches wherever they may occur.

It only took eight months after this invitation for the ECOSOC to approve the procedures set up by the UN Commission on Human Rights, which asked its Sub-Commission on Prevention of Discrimination and Protection of Minorities to compile a report with data on human rights violations from all available sources. Additionally, it requested that anybody who was aware of any instance of systematic racial discrimination, segregation, or apartheid in any nation—particularly in colonial and dependent territoriesbring it to its notice. Additionally, it granted permission for the Commission on Human Rights to request that it and its Sub-Commission on Prevention of Discrimination and Protection of Minorities be given the power to publicly review communications that contained information relevant to serious human rights violations as well as the power to thoroughly examine and investigate situations that showed a pattern of human rights violations. The method has since been referred to as the "1235 procedure" since the judgments of the ECOSOC are included in Resolution 1235. The UN Commission on Human Rights and its Sub-Commission were given permission by ECOSOC Resolution 1235 on June 6, 1967, to examine systematic human rights abuses and to look into serious human rights breaches. The 1235 protocol has really developed into an annual public discussion on human rights abuses everywhere in the globe. Non-governmental organizations (NGOs) play a significant role in this debate by actively participating in the talks and offering crucial information on human rights problems, in addition to official representatives.

Procedure 1503

After extensive planning by the ECOSOC and the UN Commission on Human Rights, Resolution 1503 of the ECOSOC was adopted on May 27, 1970. The resolution establishes a private process to handle complaints about human rights abuses. Under the 1503 process, only communications revealing "a consistent pattern of serious and reliably documented violations of human rights" are eligible for consideration. If the Secretariat determines that there are sound justifications for doing so, such communications or copies of 1503 communications are directed to other processes. The 1503 method is designed to address situations when there are repeated abuses of human rights that have been classified as such, rather than to mainly satisfy individual complainants. During the UN Commission on Human Rights' fifty-sixth session in 2000, the 1503 secret communications protocol was updated. A Working Group is chosen annually by the Sub-Commission on the Promotion and Protection of Human Rights from among its members in accordance with ECOSOC Resolution 2000/3 of June 16, 2000. It represents the five regional groupings geographically, and proper rotation is advised. Every year, immediately after the Sub-Commission regular session, the Working Group on Communications meets to review communications received from people and organizations claiming human rights abuses as well as any official answers.

Communications that are obviously unfounded are filtered out by the Secretariat and neither delivered to the relevant countries nor presented to the Working Group on Communications.The Working Group on Situations reviews the specific situations forwarded

to it by the Working Group on Communications and decides whether or not to refer any of these situations to the Commission when the Working Group finds reasonable evidence of a pattern of grave human rights violations. This group meets at least one month before the Commission in such cases. The Commission will next have to decide what to do in each incident that has been brought to its notice in this way.Special rapporteurs, special representatives, experts, and working groups have been granted the authority to investigate, monitor, and publicly report on the human rights conditions in particular nations or territories or on the most significant patterns of human rights breaches throughout the globe. Special rapporteurs and other mandate holders often travel to different countries while carrying out their duties and reporting their findings to the UN Commission on Human Rights. These missions are conducted upon the host nation's request. The special rapporteurs are allowed to utilize whatever credible sources they deem appropriate in putting together their findings. A large portion of their fieldwork involves speaking with authorities, non-governmental organizations, and victims as well as acquiring evidence directly from the scene wherever practical. Each year, the UN Commission on Human Rights receives reports from the special rapporteurs and working groups, along with suggestions for further action. The treaty bodies also employ their results in their work, particularly when assessing state reports.

Communications and the 'Urgent action' process under non-traditional methods

Extra-conventional nation and theme structures lack official complaints processes, in contrast to treaty-bodies. The communications received from different sources that include claims of human rights breaches serve as the foundation for the country's and theme bodies' work. Such letters may be provided in a variety of formats and may deal with specific instances or include information about suspected human rights breaches in action.

A significant human rights violation may be going to be perpetrated, according to messages sent to extra-conventional systems on occasion. In these situations, the Special Rapporteur or Chairperson of the Working Group may send a fax or telegram to the authorities of the state in question, requesting clarifications on the situation and pleading with them to take the necessary steps to protect the rights of the alleged victim. The Special Rapporteurs on extrajudicial, summary, or arbitrary executions and on the issue of torture, as well as the Working Groups on Enforced or Involuntary Disappearances and on Arbitrary Detention, frequently make such appeals, which are primarily of a preventative nature. Other national and topic institutions, however, sometimes adhere to the same process. Occasionally, where the situation justifies it, a number of special rapporteurs and/or working groups may address an appeal together. The requirements for urgent interventions differ depending on the mandate and are outlined in the individual bodies' working methodologies.

3. CONCLUSION

In conclusion, the CAT serves as a pillar in the international effort to abolish torture and other cruel treatment. It highlights the CAT's vital contribution to defending the values of justice and human dignity, as well as the ongoing significance of the CAT Committee in observing compliance and ensuring that the outright ban on torture is enforced everywhere. The Committee against Torture (CAT Committee) and the Convention against Torture (CAT) both serve as potent weapons in the fight against torture and other cruel treatment and punishment across the world. The CAT's history, guiding principles, and ramifications have all been examined in this essay, which highlights how crucial it is to safeguarding and advancing human rights. The CAT symbolizes an international agreement that the outright ban of torture is a basic moral and legal need. State parties are required to take concrete steps to stop acts of torture, look into them, bring charges, and compensate victims. This dedication to the

elimination of torture illustrates the CAT's continuing importance in a society where justice and human dignity continue to be fundamental principles.

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