



**COURSE MANUAL  
HUMAN RIGHTS LAW & THEORY**

Fall 2020  
(AY 2020-21)

**Instructors**

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PART I

General Information

**General Information on, International Human Rights Law & Theory, offered by Jindal Global Law School of the AY 2020-21**

*The information provided in this course manual is by the Course Coordinator Prof. Rashmi Raman. The following information contains the official record of the details of the course.*

**This information shall form part of the University database and may be uploaded to the KOHA Library system and catalogued and may be distributed amongst \_\_\_\_ year Law students for B.A. (Hons) in Legal Studies; B.A.LL.B./B.B.A.LL.B.; LL.B.; LL.M. courses if necessary.**

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Course Title:	<b>International Human Rights Law &amp; Theory</b>
Course Code:	L-CL-0001
Course Duration:	One Semester
Number of Credit Units:	4
Level:	LLB and BA-LLB
Medium of Instruction:	English
Pre-requisites	Public International Law
Pre-cursors:	Nil
Equivalent courses:	Nil
Exclusive courses:	Nil

## PART II

### *Course Description*

This is a compulsory course that integrates the law and theory of international human rights, from multidisciplinary and critical perspectives. The course material includes the study of comparative regional and international human rights law jurisprudence and historical, contemporary and critical challenges to mainstream human rights theory.

### *Course Aims*

The aim of this course is to provide students with an understanding of the nature, scope and practical application and enforcement of modern international human rights law and some of its theoretical foundations and components. The course has four components:

The first part of the course examines the origins, development and history of human rights. During this part of the course students will explore the nature and events that lead to the birth of human rights as we know them today. Challenges to the development of rights and the simultaneous development of equality will be addressed.

The second part of the course examines the origins, development and key principles that underpin modern international human rights law. During this part of the course students will explore the nature and scope of obligations and duties under international human rights law. We will also touch upon some of the tensions, problems, and manifest contradictions involved in translating the theory of human rights into practice. Students will also learn about regional human rights mechanisms, the obligations of states to implement international obligations at the domestic level and the tensions between the universal aspirations of the UN and regional cultural differences in the understanding, articulation and implementation of human rights domestically.

The third part of the course examines the UN human rights protection system and thematic areas of rights including religion, torture, reproductive rights and the right to education. During this part of the course, we study specific rights via UN Treaty-based human rights bodies and regional treaties. Students will critically evaluate the decisions of international human rights bodies and engage in individuals' ability to exercise their human rights in practice.

The final week of the course reviews the content of the course and considers the future of human rights from both a theoretical and critical perspective. It will challenge the founding aims of the UDHR, the plausibility of a truly universal system and the challenges that exist which challenge the future role of the UN.

### *Course Texts*

There is no compulsory core text for this course. This is partly as the course combines both theory and practical implementation of human rights law. If students would like a more in depth resource for international human rights, or theory, please see some recommendations below.

**All of the core course readings will be available for download on Dropbox – the hyperlink will be shared with students separately.**

International Law generally:

Shaw, M. N *International Law*. 7<sup>th</sup> edition Cambridge University Press, Cambridge (2014)

International Human Rights Law specifically:

- Eds: Joseph, S. McBeth, A. *Research Handbook on International Human Rights Law*. Edward Elgar, Cheltenham UK, Northampton MA, USA (2011)
- Fredman, S. *Discrimination Law*. 2<sup>nd</sup> ed. Oxford, UK. OUP (2010)
- Alston, P. Goodman, R. *International Human Rights*. Oxford University Press, Oxford (2012)
- Moeckli, D. Shah, S. Sivakumaran, S. (eds) *International Human Rights Law*. Oxford University Press, Oxford, New York (2018)
- Oette, L. Bantekas, I. *International Human Rights Law*. Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, Sao Paulo, Delhi, Mexico City (2013)

Human Rights Theory:

- Hunt, L. *Inventing Human Rights: A History*. W. W. Norton & Company, (2008)
- Hoffmann, S-L. *Human Rights in the Twentieth Century: Human Rights in History*. Cambridge University Press, New York (2011)
- Moyn, S. *The Last Utopia: Human Rights in History*. First Belknap Press of Harvard University Press, USA(2010)
- Twining, W. (ed) *Human Rights: Southern Voices*. Cambridge University Press, Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, Sao Paulo, Delhi (2009)

*Course intended learning outcomes*

<b>Course Intended Learning Outcomes</b>	<b>Weight age</b>	<b>Teaching and Learning Activities</b>	<b>Assessment Tasks/ Activities</b>
<i>By the end of the course, students should be able to:</i>			
Demonstrate a good understanding of the theoretical foundations of human rights and the beginnings of the concept of human rights and the human rights system, as we know it today.	%	<i>Reading, comparison and analysis of key international human rights law treaties, jurisprudence and academic works.</i> Students will be assessed upon their ability to read and critically evaluate the essential readings set out in this manual.	
Display a good understanding of the nature and scope of international human rights law and the UN Charter and Treaty based human rights machinery.	%	All students must attend the lectures and participate in the discussion seminar. Students must come to class ready to discuss and critically evaluate the readings.	
Demonstrate a good understanding of the practical application of international human rights law to specific human rights problems.	%		
Students will demonstrate in class and in the examination their ability to analyse complex human rights problems and apply relevant provisions of international human rights law to a hypothetical situation/case study and a theoretical knowledge of the underpinnings of the international human rights system, its operation and issues associated with its implementation.	%		

### ***Grading of Student Achievement<sup>1</sup>***

**To pass this course, students must obtain University mandated passing grades in the final assessment. Coursework for this purpose means those ways in which students are assessed otherwise than by the end of session examination. These could include reaction papers, class participation, tutorial presentations, group work and a final research paper.**

The details of the grades as well as the criteria for awarding such grades are provided below.

<b>Letter Grade</b>	<b>Percentage of Marks</b>	<b>Grade Definitions</b>	
O	80% and above	Outstanding	Outstanding work with strong evidence of knowledge of the subject matter, excellent organizational capacity, ability to synthesize and critically analyse and originality in thinking and presentation.
A+	75 to 79.75%	Excellent	Sound knowledge of the subject matter, thorough understanding of issues; ability to synthesize critically and analyse
A	70 to 74.75%	Good	Good understanding of the subject matter, ability to identify issues and provide

<sup>1</sup> Under extraordinary circumstances, the JGU Academic Council or the JGU Deans' Council can suspend Clause D or make it optional. If Clause D is suspended, the policy which will be framed by the School based on the decision of the said bodies will supersede Clause D. However, whether a situation is extraordinary or not will be decided by the said bodies only.

			balanced solutions to problems and good critical and analytical skills.
A-	65 to 69.75%	Adequate	Adequate knowledge of the subject matter to go to the next level of study and reasonable critical and analytical skills.
B+	60 to 64.75%	Marginal	Limited knowledge of the subject matter, irrelevant use of materials and poor critical and analytical skills.
B	55 to 59.75%	Poor	Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials.
B-	50 to 54.75%	Pass	“Pass” in a pass-fail course. “P” indicates at least the basic understanding of the subject matter.

<b>NEW COURSE LETTER GRADES AND THEIR INTERPRETATION</b>			
<b>Letter Grade</b>	<b>Percentage of Marks</b>	<b>Grade Points</b>	<b>Interpretation</b>



P1	45 - 49	2	<b>Pass 1:</b> Pass with Basic understanding of the subject matter.
P2	40 - 44	1	<b>Pass 2:</b> Pass with Rudimentary understanding of the subject matter.
F	Below 40	0	<b>Fail:</b> Poor comprehension of the subject matter; poor critical and analytical skills and marginal use of the relevant materials. Will require repeating the course.
P	Pass		<b>'P'</b> represents the option of choosing between the Pass/Fail grading system over the CGPA grading system in the COVID 19 semester in Spring 2020. The option is provided when students attain a minimum of 40 percentage marks under the current grading structure in a given subject.
I	Incomplete		Extenuating circumstances prevent the student from completing coursework assessment, or taking the examination; or where the Assessment Panel at its discretion assigns this grade. If an <b>"I"</b> grade is assigned, the Assessment Panel will suggest a schedule for the completion of work, or a supplementary examination.

### PART III

#### *Keyword Syllabus*

International law, human rights, equality, non-discrimination, critique of human rights, United Nations human rights bodies, Charter bodies, treaty bodies, Universal Periodic Review, exceptions. Limitations, derogations, regional mechanisms, generations of human rights, crisis of human rights.

#### *Course /Class Policies*

#### A Word Of Caution On Online Readings

Online sources can be classified into reliable, unreliable and outright bogus. The internet is an open domain in which all and sundry can create web pages and indulge in propaganda, falsification or misrepresentation of events. The few sources that can help you with basic information and which are fairly unbiased are: websites of established newspapers, magazines and journals. Students should always consult with the instructors about the veracity and authenticity of a particular website and its suitability for researching topics covered in this syllabus.

### **Academic Integrity and Plagiarism**

Learning and knowledge production of any kind is a collaborative process. Collaboration demands an ethical responsibility to acknowledge who we have learnt from, what we have learned, and how reading and learning from others have helped us shape our own ideas. Even our own ideas demand an acknowledgement of the sources and processes through which those ideas have emerged. Thus, all ideas must be supported by citations. All ideas borrowed from articles, books, journals, magazines, case laws, statutes, photographs, films, paintings, etc., in print or online, must be credited with the original source. If the source or inspiration of your idea is a friend, a casual chat, something that you overheard, or heard being discussed at a conference or in class, even they must be duly credited. If you paraphrase or directly quote from a web source in the examination, presentation or essays, the source must be acknowledged. The university has a framework to deal with cases of plagiarism. All forms of plagiarism will be taken seriously by the University and prescribed sanctions will be imposed on those who commit plagiarism.

### **Disability Support and Accommodation Requirements**

JGU endeavors to make all its courses accessible to students. All students with any known disability needing academic accommodation are required to register with the Disability Support Committee [dsc@jgu.edu.in](mailto:dsc@jgu.edu.in). The Committee has so far identified the following conditions that could possibly hinder student's overall well-being. These include: physical and mobility related difficulties; visual impairment; hearing impairment; medical conditions; specific learning difficulties e.g. dyslexia; mental health.

The Disability Support Committee maintains strict confidentiality on the matters under its purview. Students should preferably register with the Committee during the month of June/January as disability accommodation requires early planning. DSC will coordinate all disability related services such as appointment of academic mentors, arranging infrastructural facilities, and course related requirements such as special lectures, tutorials and examinations.

All faculty members are requested to refer students with any of the above-mentioned conditions to the Disability Support Committee for getting them disability-related accommodation. Faculty members are also requested to be sensitive to the needs of such students and cooperate with the

Disability Support Committee and the School, extending students the necessary support by maintaining utmost confidentiality of the matter.

### **Safe Space Pledge**

This course may discuss a range of issues and events that might result in distress for some students. Discussions in the course might also provoke strong emotional responses. To make sure that all students collectively benefit from the course, and do not feel disturbed due to either the content of the course or the conduct of the discussions. Therefore, it is incumbent upon all within the classroom to pledge to maintain respect towards our peers. This does not mean that you need to feel restrained about what you feel and what you want to say. Conversely, this is about creating a safe space where everyone can speak and learn without inhibitions and fear. This responsibility lies not only with students, but also with the instructor.

*P.S. The course instructor, as part of introducing the course manual, will discuss the scope of the Safe Space Pledge with the class.*

### **Method Of Conducting Class**

The class format will combine lectures and discussion. This is an interdisciplinary course, where we will read not only about the legal methods to approach difficult situations, but also importantly, we will engage with history, anthropology, social science, popular culture, art, music, drama and politics when it is indicated by our discussion subject. The structure therefore depends on students participating enthusiastically and raising relevant questions and comments that will take the conversation forward.

### ***On online lectures, notes, materials and classroom discussion during COVID-19***

Due to the COVID-19 pandemic related restrictions, classes for Fall 2020 shall commence on the online teaching platform MS Teams.

In readiness for this and the particular challenges it poses to free and open communication and dialogue in the classroom space, we have meticulously curated and created content for each week of the course and uploaded all the reading to a shared folder which will be made available to students in the course. In addition, clearly defined weekly content and discussion questions form part of this updated and revised course manual.

Student participation is a strong motivator and a driver of progress in this course. Where necessary, discussion groups can be created on MS Teams with a view to enhance the quality and rigor of the discussion. Students are expected to prepare for and participate in class discussion on a regular basis. Students are expected to review weekly materials well in advance of each

class and prepare their own notes on it: they shall then be responsible for leading the class through comments and observations based on their understanding of the given study material for that week. The instructors of the course may initiate discussion on the basis of a reported event or a reported case decision in the context of the subject matter taught in the class.

Student participation in the discussion will be assessed as part of continuous assessment even if this component does not directly contribute to the final grade a student receives in the course. We understand that the asymmetric learning method of online teaching can create and harbour inequities in distribution among students enrolled in the course and will fully support those students who are struggling to access the internet or other technology to avail themselves of the course material.

### ***Assessment Pattern***

Please note that individual sections of the LLB / BALLB programmes have different course instructors and therefore this assessment pattern may not be followed by all sections:

1. Two Critical Essays (20%)

The critical essays are intended to be independent essays by the student based on selected readings from the course. Students must select the readings they wish to base their first essay on by the end of the third week of classes.

In the essay (no more than 2500 words), the student must critically engage with and discuss theories from the selected readings and explain how they relate to other material in the course such as cases or other pieces of reading or an audio-visual source.

*The first essay shall be due in the 7th teaching week, and the second essay shall be due in the 14th teaching week.*

2. Mid-term Quiz (10%)

In the midterm week, the students are required to finish a quiz that would cover almost half of the complete syllabus. The exact date and format of the quiz (including whether it is take-home or in class) will be decided later.

### ***Formatting requirements for both the essays are the following:***

- *12-point Times New Roman font • double-spaced (except for footnotes and bibliography) • 2.5cm margins • pages numbered • title page with your name, date, course title, and paper title • footnotes and bibliography must be included •*



Part IV

*Weekly Course Outline*

<b>PART A: FOUNDATIONS</b>	
Week 1	Introduction to the Human Rights Theory, Concept of Human Rights, & Historicising Rights
Weeks 2 & 3	Sources of International Human Rights Law
Week 4	Limitations, Derogations, Reservations and Exceptions
Week 5	The UN Charter-based Human Rights Protection System: The UN Human Rights Council Universal Periodic Review: A Case Study of India
Week 6	Critiques of Human Rights Law
<b>PART B : CONTEXTS</b>	
Week 7	Emancipatory Struggles
Week 8	Equality and Non-discrimination
Week 9-10	Freedom of Religion, Expression, Association, and Assembly
Week 11	National Security, Humanitarian Intervention, and Torture
Week 12	Gender and Human Rights
Week 13	Economic and Social Rights
Week 14	Human displacement and human rights in crisis
Week 15	Review

**Detailed Readings**

## PART A: FOUNDATIONS

**WEEK 1: Introduction to the Human Rights Theory, Concept of Human Rights, & Historicising Rights**

This week aims at deliberating the underlying philosophy linking human rights together, to pinpoint what the ‘human’ in human rights means. We aim to analyse different periods of history to this end. We also aim to determine if deliberations on human rights are victim centric, and if so, whether that acts as a limitation on the entire system. In the end, we will critically analyse whether there is a hierarchy within the prevailing human rights, or whether, in fact, there are too many human rights in the system.

**Essential Readings:**

- Wheatley, S., “*What We Mean When We Talk about ‘Human Rights’*”, Chapter 1, ‘Idea of International Human Rights Law’, (OUP 2019)
- *Victims*, Marks, S. & Clapham, A., “*International Human Rights Law Lexicon*”, (OUP 2018)
- Mutua, M., *The Complexity of Universalism in Human Rights*, Chapter 2, Sajo, A., ‘Human Rights with Modesty: The Problem of Universalism’ (Springer 2004)

**Audio/Visual resources and Newspaper sources:**

- “*What are the universal human rights? - Benedetta Berti*”, TED-ED, 15 October 2015, available at: <https://www.youtube.com/watch?v=nDgIVseTkuE>
- “*Cyrus Cylinder: How a Persian monarch inspired Jefferson*”, BBC News, 11 March 2013, available at: <https://www.bbc.com/news/world-us-canada-21747567>

**Further Readings:**

- Sen, A., “*Elements of a Theory of Human Rights*”, Philosophy and Public Affairs, (2004)
- Moyn, S., “*The Last Utopia: Human Rights in History*” First Belknap Press of Harvard University Press, USA (2010) pp. prologue and Chapter 1 (pp.1-43) *especially section covering 1770-1945*
- Lutz, D. S., “*Origins of American Constitutionalism*”, Baton Rouge, Louisiana State (1998) pp 5- 22, 136-149
- Donnelly, J., “*Universal Human Rights in Theory and Practice*”, Cornell University Press, Ithaca (2013) pp. ‘Humans and Society in Hindu South Asia’ p. 147-156

- Beitz, C., “*The Idea of Human Rights*”, (OUP 2009)
- Henkin, L., “*Human Rights: Ideology and Aspiration, Reality and Prospect*”, in Power, S. & Allison, G. (eds.), *Realizing Human Rights: Moving from Inspiration to Impact*” Palgrave Macmillan (2006).
- Moeckli, D. et al. (eds.), Chapter 1, *International Human Rights Law*, (2010) (pp.17-27) pp.49-100
- ‘Rights’ as entered on the Stanford Encyclopedia of Philosophy (revised 2-7-2011) available at: <http://plato.stanford.edu/entries/rights/>
- Ishay, M., *Liberty, Tolerance and Codes of Justice*, Chapter 1, *Human Rights Reader: Major Political Essays, Speeches, and Documents from Ancient Times to the Present*, University of California Press, Berkeley, Los Angeles, London (2007) pp.
- The Hammurabi code available here: <http://avalon.law.yale.edu/ancient/hamframe.asp>

### Discussion Questions:

1. What are rights? Are they the same as human rights?
2. Were human rights applicable to everyone equally? Who did they protect and from who?
3. Why was an exclusion made? What is an example of this and how?
5. Name two Conventions and two Declarations that have been instituted by the UN since 1980. How are they different?
6. Why did the ICCPR and ICESCR take so long to come into force?
7. One may argue that the content of UN treaties changed after newly independent/decolonised states joined the UN and helped to influence their content. To what extent were these new treaties emancipatory? To what extent were they using the 'new' (e.g. post UDHR) language of rights?
8. Identify the role of Optional Protocols. What do they establish?
9. Why is the Enlightenment era important? Why is the history of rights important to understand?
10. How is the death of Jean Calas and the subsequent action important for a reading on Western thought of the era? How similar are these concepts, articulations and interpretations and implementation of rights similar to the notion of human rights today?
11. Consider the provisions of the American Bill of Rights. How similar are its provisions to the English and French counterparts.?
12. How many similarities are there between the UDHR and the English, French and American human rights documents? How should we then consider the UDHR’s claim to be universal?



### ***WEEKS 2 & 3: Sources of International Human Rights Law***

In this two week section, we examine how to identify international human rights law. We will identify the special sources in IHRL, and how they interact with the traditional sources of law. We will determine what reservations and derogations are in the context of IHRL treaties. We will pay particular attention to the conflict between the aims of IHRL to guarantee all individuals across the world the same set of rights with the state's ability to exercise its sovereign rights to file declarations and reservations. We will examine treaty law and treaty bodies, using CERD as a case study. Beyond that, we will also briefly examine regional human rights treaties, and deliberate upon the differences between these treaties and international human rights conventions.

#### **Essential Readings:**

- Statute of the ICJ, Art.38
- Vienna Convention on the Law of Treaties (1969), articles 1, 2(a), 19-23; 26, 31, 46 and 53, 56 available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>
- Moeckli, D. et al, Chapter 4, *International Human Rights Law* (OUP 2018)
- Thirlway, H., *Specialities: Jus Cogens, Obligations Erga Omnes, Soft Law*, in *The Sources of International Law* (2<sup>nd</sup> ed 2019)
- Gardiner, R., *The Vienna Convention Rules on Treaty Interpretation*, in *Treaty Interpretation* (2012)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), (1965) available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> & [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)
- Thornberry, P., *The Committee on the Elimination of Racial Discrimination*, in Part III, *Organs Monitoring Treaty Compliance, UN and Human Rights, A Critical Appraisal* (2<sup>nd</sup> ed 2020)
- Regional Protection Framework:
  - European Convention on Human Rights (1953)
  - The African Charter on Human and Peoples' Rights (1986)
  - The Inter-American Convention on Human Rights (1978)
  - The Cairo Declaration of Human Rights in Islam (1990) available here: <http://www.oic-oci.org/english/article/human.htm>

- The Arab Charter of Human Rights (2004)
- ASEAN Declaration on Human Rights (2012)
- Huneus, A and Madsen, M. *Between universalism and regional law and politics: A comparative history of the American, European, and African human rights systems*, International Journal of Constitutional Law, 16 (1) 2018 available at: <https://academic.oup.com/icon/article/16/1/136/4995560>
- UN Human Rights Committee, General Comment 24 (1994)
- Milanovic, M., *Extraterritorial Application of Human Rights Treaties, Law Principles and Policy*, (OUP 2011).

### Cases and Comments:

- UN Human Rights Committee, General Comment, No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant. Adopted 29<sup>th</sup> March 2004
- UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations. Adopted 14<sup>th</sup> December 1990
- Hamdan v. Rumsfeld 548 U.S. 557
- Boumediene v. Bush 553 U.S. 723
- Ameziane v. Obama, United States Court of Appeals, Case No. 09-5263, Decided January 8, 2010.
- Al Skeini and Ors. v. United Kingdom Application No. 55721/07, Decided on 7 July 2011
- Al Jedda and Ora. v. United Kingdom Application No. 27021/08, Decided on 7 July 2011
- Swaran Singh v. State (2008) 8 SCC 435.
- CERD General Recommendation 32, 75<sup>th</sup> Session: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms Racial Discrimination (2009) *available at: <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>*
- CERD General Recommendation 35, 83<sup>rd</sup> Session: Combating Racist Hate Speech (2013) *available at: <http://www.refworld.org/docid/53f457db4.html>*
- TBB-Turkish Union in Berlin v Germany, CERD Communication No. 48/2010, Doc No. CERD-C-82- D-48-2010 *and the dissenting opinion by Mr. Carlos Manuel Vazquez.*
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- UN Convention on the Rights of the Child (CRC)
- UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- Convention on the Elimination of all forms of Racial Discrimination (CERD)
- Convention on the Rights of Persons with Disabilities (CRPD)
- Convention on the Rights of Migrant Workers (CRMW)
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED)

**Further Readings:**

- Baxi, U. *From Human Rights the Right to be Human: Some Heresies*, India International Centre Quarterly, 13 (3/4) 1986
- Goodman, R., *Human Rights Treaties, Invalid Reservations, and State Consent*, The American Journal of International Law, vol. pp.531-560 (2002)
- Bantekas, I. Oette, L., “Sources”, Chapter 2, *International Human Rights Law: The Normative Framework in International human Rights Law and Practice*, pp.53-71, (Cambridge University Press 2013)
- Charlesworth & Chinkin, *The Boundaries of International Law: A Feminist Analysis*, Chapter 4 pp.96-123 (2000)
- Raz, J., *Human Rights in the Emerging World Order* 1 Transnational Legal Theory 31 (2010)
- Pravasi Bhalai Sangathan v. Union of India, AIR 2014 SC 1591
- Mahali Dawas & Yousef Shava v. Denmark, CERD Communication No. 46/2009, Doc No. CERD-C- 80-D-46-2009
- CERD General Recommendation 31, 65th Session: On the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System (2005) available at:<http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>
- Optional Protocol to the Convention on the Elimination of Discrimination against Women
- available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>
- Stephen Hagan v. Australia, CERD Communication No.26/2002, available at:
- <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>
- Koh, H., “*Why Do Nations Obey International Law?*”, Yale Law Journal 106 (1997): 2599.
- Boyle, A. & Chinkin, C., “*The Making of International Law*”, (2007)
- Goodman, R. Alston P., “*International Human Rights, The Successor to International Human Rights in Context: Law, Politics, and Morals*”, pp. 1080-1116, (OUP 2013)

**Discussion Questions:**

1. What is a “source” of international law and why do human rights lawyers and advocates need to have a good understanding of these sources?
2. What is customary international law?
3. What is treaty law?
4. What is soft law? Give examples of both international human rights law treaties and soft law instruments.
5. Can a norm be a norm both of treaty law and customary international law? If so, how? How do you think this works?
6. What is a reservation under IHRL?
7. Who, if anyone, can determine whether a reservation to a human rights treaty is valid?

8. Should human rights monitoring bodies have the power to strike down reservations? Why/Why not?
9. What do opposability and severability refer to?
10. How have decisions/comments from courts and committees evolved over time regarding the existence of reservations and how they can engage with undesirable reservations?
11. Which human rights norms qualify as peremptory norms of international law? How, if at all, does peremptory status (*jus cogens* norms) contribute to better protection of human rights?
12. What are *erga omnes* obligations? How important are they in human rights law?
13. General Comment 24 is considered a controversial General Comment of the Human Rights Committee. Why? What does this demonstrate about the tensions between IHRL as a body of law and state sovereignty? How could you relate this to the Moyn reading from week 1?
14. How is a treaty drafted? How does it come into force? How are domestic legal obligations established?
15. What does the CERD aim to achieve? Have the contents of CERD and its emphasis changed over time?
16. Does the CERD have a complaints hearing mechanism? Does it need an Optional Protocol to hear cases? If yes/no is this different to other international human rights law treaties?
17. Are all states bound under the complaints hearing mechanism? Does this differ between treaties?
18. What must be in force for an individual to be able to file a complaint to the CERD Committee?
19. What is the role of General Comments/Recommendations?
20. What is the legal status of a General Comment/Recommendation? How effective are both the decisions of treaty body complaints hearing mechanisms and general comments/recommendations in securing change?
21. What do General Recommendations 32 and 35 tell us about the pursuit to eliminate racial discrimination?
22. What does the report of the Law Commission of India examine to find a definition of hate speech?
23. What provisions already exist within Indian domestic law that mirror IHRL provisions?
24. Is extraterritorial application of human rights treaties allowed?

### **WEEK 4: Limitations, Derogations, Reservations and Exceptions**

This week we continue our examination of the basic interpretive principles of international human rights law. We note that some rights may, under particular circumstances, be limited. We examine the criteria for the limitation of rights. We will also note the role of margin of appreciation in examining the state's role in implementing/limiting these rights. We also review the criteria and procedure for state derogations as set out in Article 4 of the ICCPR.

#### **Essential Readings:**

- <https://www.asil.org/insights/volume/24/issue/5/human-rights-law-time-coronavirus>
- [https://www.ohchr.org/Documents/Events/EmergencyMeasures\\_COVID19.pdf](https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf)
- UN ICCPR Articles 4, 6, 9, 12, 19, 20, 21, 22, 29
- UN ICESCR Articles 6, 7, 8, 10 and 13
- ECHR Articles Article 15
- UN Human Rights Committee General Comment 29, States of Emergency (2001), available at: <https://www1.umn.edu/humanrts/gencomm/hrc29.html>
- UN Human Rights Committee General Comment 24, General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant (1994), available at: <https://www1.umn.edu/humanrts/gencomm/hrcom24.htm>
- Moeckli, D. et al, Chapter 5, Nature of Obligations, in *International Human Rights Law*, 3<sup>rd</sup> ed, (OUP 2018).
- Derogations in Time of Emergency, ECHR  
URL: [https://www.echr.coe.int/Documents/FS\\_Derogation\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Derogation_ENG.pdf)
- Simma, B., Hernandez, G., *Legal Consequences of an impermissible Reservation to a Human Rights Treaty: Where do we stand?* in *Law of Treaties beyond the Vienna Convention* (2011)
- Benvenisti, E., *Margin of Appreciation, Consensus, and Universal Standards*, 31 NYU Journal of International Law and Politics 843 (1999).

#### **Cases:**

- *Belilos v. Switzerland* (1988) 132 ECHR, available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57434#{"itemid":\["001-57434"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57434#{)

- Loizidou v. Turkey [1995] ECHR 10 available at [https://hudoc.echr.coe.int/fre#{"itemid":\["001-57920"\]}](https://hudoc.echr.coe.int/fre#{)
- Lawless v. Ireland, 1 Eur. Ct. H.R. 15 (1961)
- Lucia Sala de Touron v. Uruguay, Communication No. 32/1978, U.N. Doc. CCPR/C/OP/1 at 61 (1984) available here: [http://hrlibrary.umn.edu/undocs/html/32\\_1978.htm](http://hrlibrary.umn.edu/undocs/html/32_1978.htm)
- The Greek Case, 1969 Y.B. Eur. Conv. on H.R. 71-72 (Eur. Comm'n on H.R.).
- Brannigan and McBride v. UK ECHR Application no. 14553/89 (1993)

### Further Readings:

- *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* UN Doc. No. E/CN.4/1985/4, Annex (1985) Available here: <http://www1.umn.edu/humanrts/instree/siracusaprinciples.html>
- Ghandhi, S., *The Human Rights Committee of the International Covenant on Civil and Political Rights: Practice and Procedure in the New Millennium*, 48 *Indian Journal of International Law*, 208-231, (2008).
- Gross, O., *Once More unto the Breach: The Systemic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies*, 23 *Yale Journal of International Law* 437 (1998)
- Nuemayer, E., *Qualified Ratification: Explaining Reservations to International Human Rights Treaties*, *Journal of Legal Studies* 36, 397, (2007)
- Schabas, W., *Invalid Reservations to ICCPR: Is United States Still a Party?*, *Brook Journal of International Law* 21 (1996).
- Cook, R., *Reservations to the Convention on the Elimination of All Forms of Discrimination against Women*, *Virginia Journal Of International Law* 30 (1990)
- Redgwell, C., *Reservation to Treaties and Human Rights Committee General Comment No.24*, *International and Comparative Law Quarterly*, Vol. 46, Issue. 02, pp 390-412, (1997).
- Lijnzaad, L., *Reservations to UN-Human Rights Treaties, Ratify and Ruin?*, 131-149, (Martinus Nijhoff, 1995)
- Parisi, F.; Sevchenko, C., *Treaty Reservations and the Economics of Article 21 (1) of the Vienna Convention*, *Berkeley Journal of International Law*, Vol. 21, No. 1, 1-26, (2003)
- Keller, L., *The Impact of States Parties' Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, *Michigan State Law Review*, Rev. 309, 309- 326, (2014)
- Moloney, R., *Incompatible Reservations to Human Rights Treaties: Severability and The Problem of State Consent*, *Melbourne Journal of International Law* , Vol. 5 (2004)
- Baylis, E., *General Comment 24: Confronting the Problem of Reservations to Human Rights Treaties*, *Berkeley Journal of International Law*, Vol.17, Issue 2, 277-329, (1999).

**Discussion Questions:**

1. When, how and for what reasons can states justifiably limit rights? What procedure must be followed?
2. What is a “derogation”? What is a “limitation”?
3. What rights are contained in articles 6, 9, 18, 19, and 21 of the ICCPR? Are these derogable or non-derogable? If they are non-derogable what can states still do?
4. Are there any rights that can never be subject to limitation?
5. Under what circumstances may a state derogate from international human rights law?
6. Consider the case law discussed in this week and discuss how public emergency has been defined by the European Court of Human Rights.
7. What is the procedure for states wishing to derogate from the ICCPR?
8. Can a state derogate from the ICESCR?

**WEEK 5: The UN Charter-based Human Rights Protection System: The UN Human Rights Council Universal Periodic Review: A Case Study of India**

In 2006 the UN dissolved the Human Rights Commission under Kofi Annan and established the Human Rights Council in an effort to re-invent the functioning, and reputation of the UN. This week we examine the UN HRC's newest procedure – the Universal Periodic Review (UPR). The UPR was established in 2006 in an attempt to avoid the politicization that plagued the former UN Human Rights Commission. The UPR provides a means for the periodic examination of every UN member state's human rights record, regardless of the treaty ratifications of a particular state. This week we will examine the UPR procedure through the lens of a case study of India before the UPR.

**Essential Readings**

- UN GA Res.60/251 Establishing the Human Rights Council. UN GA Doc. A/RES/60/251 available at:[http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf)
- State Behaviour at the Universal Periodic Review: An Examination of India's Third Review at the United Nations Human Rights Council, A Komath, available at:
- India's Third 'National Report' submitted to the HRC. Doc NO: A/HRC/WG.6/27/IND/1 dated 23.02.2017. Available here: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx>
- Moeckli, D. et al, Chapter 19, *International Human Rights Law*, 370-387, (OUP 2018). (Section on Human Rights Council)

**Cases:**

- Compilation of UN information
- Summary of Stakeholders' information
- Questions submitted in advance and whether these were answered.
- All docs available here: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx>

**Further Readings**

- Milewicz, K. and Goodin, R., *Deliberative Capacity Building through International Organisations: A case of the Universal Periodic Review*, B.J.Pol S. 48, (2016)
- NLU Delhi's India's UPR 2017t: url: <https://nludelhi.ac.in/download/publication/2017/India%20Third%20Universal%20Periodic%20Review.pdf>
- The best way to learn about the Universal Periodic Review (UPR) is to look at the web site and explore its working methods: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>



- Basic Facts about the UPR as found here:<http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>
- For a non-governmental perspective on the UPR process see: <http://www.upr-info.org/>
- You may also wish to watch the web cast of India before the UPR:<http://www.ohchr.org/EN/HRBodies/UPR/Pages/INWebArchives.aspx>
- African Women Millennium Initiative on Poverty & Human Rights (Zambia), Working with the Universal Periodic Review of the United Nations Human Rights Council: A Handbook for Civil Society Organizations(2010)

*India's first and second cycle reports and all other documentation are also located here:*  
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx>

**See Also:**

Watch:

“What is the UPR?”, UPR Info, available at <https://www.youtube.com/watch?v=n4Hr1GMSjkM>

**Discussion Questions**

1. What is the Universal Periodic Review (UPR) mechanism? How does it work? How was it established?
2. What is the value, if any, of the UPR?
3. What are the benefits and drawbacks of states examining the human rights records of other states?
4. What role do NGOs play in the UPR?
5. What do you think about India's National Report as submitted to the UPR? Do you think it adequately reflects the human rights situation in the country?
6. Compare and contrast the State Report of India with Stakeholders summary.
7. What do you think of the Decision on the Outcome of India? Do you think it is realistic? What do you think the chances are for implementation at the domestic level?
8. How effective is the UPR process?

**WEEK 6: Critiques of Human Rights Law**

This week will analyse the historical drafting of IHRL, the inherent contradictions within it, and how the West's articulations of rights and notions of equality were unequally applied and subsequently not equally accessible globally. Discrimination in IHRL's application and the justifications thereof will be dismantled and examined from a 21<sup>st</sup> century human rights perspective.

**Essential Readings:**

- Mutua, M. “*Savages, Victims and Saviours: The Metaphor of Human Rights*” Harv. Int'l L. J. 201 (2001)
- Kapur, R., “*Human Rights in the 21st Century: Taking a Walk on the Dark Side*”, Sydney Law Review (2006)
- Mende, J., “*Are Human Rights Western—And Why Does It Matter? A Perspective from International Political Theory*”, Journal of International Political Theory, 2-22, (2019)
- Alston and Goodman, “*Conflict in Culture, Tradition and Practices: Challenges to Universalism*” in *International Human Rights*, 517-530, (1<sup>st</sup> Ed 2012)

**See also:**

- César Rodríguez-Garavito, “*Against Reductionist Views of Human Rights*”, Open Democracy, July 30, 2013, <http://www.opendemocracy.net/openglobalrights/c%C3%A9sar-rodr%C3%ADguez-garavito/against-reductionist-views-of-human-rights>
- Salil Shetty, “*Decolonising Human Rights*”, 22 May 2018, available at: <https://www.amnesty.org/en/latest/news/2018/05/decolonizing-human-rights-salil-shetty/>
- KONY 2012, available at: <https://www.youtube.com/watch?v=Y4MnpzG5Sqc>

**Further Readings:**

- Chimni, B.S., “*International Law and World Order: A Critique of Contemporary Approaches*” (1993) (selected chapters)

- Anghie, A. “*Finding the Peripheries: Sovereignty and Colonialism in Nineteenth Century International Law*” 40 Harv. Int’l L.J. 1 (1999)
- Matz, N., “*Civilization and the Mandate System under the League of Nations as Origin of Trusteeship*”, A. von Bogdandy and R. Wolfrum, (eds.), Max Planck Yearbook of United Nations Law, Volume 9, 47-95, (2005)
- Rodley, N. S., “*Integrity of the Person*” as in Moeckli, D. et al. (eds.) International Human Rights Law (2018)
- ‘*Equality and Non-Discrimination*’, as in Moeckli, D. et al. (eds.) International Human Rights Law, 189-208, (2018).
- McMinn, T., “*With Friends Like These’: Human Rights, Neo-conservatism and US Foreign policy from Carter to Reagan.*” University of Sydney Thesis. (2011)
- Kennedy, D., “*The International Human Rights Movement: Part of the Problem?*” 15 HARV. HUM. RTS. J. 99 (2002)

### Optional Media:

Battle of Algiers  
Lumumba

### Discussion Questions:

1. Countries like the UK, France and Belgium had conflicting political interests. What were these and what emerged as a consequence of these?
2. The UK and other states lobbied for certain IHRL provisions to not be codified. What were these and why were they against the UK’s political interests?
3. Independence movements in colonised states often relied on the principle of self-determination to assert a legal right to independence. Where was the mention of the right to self-determination found? Who were parties to the document? What was the intended applicability of the principle and was the understanding of potentially broader application common to both state leaders or did they have different interpretations?
4. How does Mutua construct the idea of a good or bad state? What would a state’s voluntary re- structuring of its internal laws to be compatible with IHRL provisions more closely align with?
5. How does Mutua define the concept of a victim within IHRL?
6. How does Mutua refer to the Christian crusades? What relevance might this have for IHRL today?
7. Do you feel the current international human rights structure to blame for inequality today or are there other more influencing factors?

## PART B: CONTEXTS

**WEEK 7: Emancipatory Struggles**

This week will examine social movements to gain an understanding of how marginalised groups have sought equality. We will then apply these experiences to the ‘annihilation of caste’ movement in India to draw comparative perspectives with the Dalit search for equality. Questions of what equality has meant historically, whether these were sufficient, and conceptions of equality will be discussed.

**Essential Readings:**

- International Covenant for the Elimination of Racial Discrimination (CERD) 1965 - Preamble & Article 1.
- Dalits and the Democratic Revolution - Dr Ambedkar and the Dalit Movement In Colonial India. Gail Omvedt pages 167-177, and conclusion, pages 324-341.
- Bob, C., “*Dalit Rights are Human Rights: Caste Discrimination, International Activism and the Construction of a New Human Rights Issue.*”, Human Rights Quarterly, Vol. 29, No.1, 167-193, (2007)
- Concluding Observations of the Committee for the Elimination of Racial Discrimination – India, CERD/C/304/Add.13 (17.09.1996)
- Ambedkar, B.R., “*The Annihilation of Caste*”, Columbia CNTML, available here, <http://ccnmtl.columbia.edu/projects/mmt/ambedkar/web/index.html>, PDF pages 10-13; 16-21, 23, 27-34; 36-40. / sections 6, 7, 11.
- McCann, M., “*Law and Social Movements: Contemporary Perspectives*”, 2 Annual Review of Law and Social Science, 17, (2006).

## See also:

- Racism against Africans in India, *Al Jazeera – The Stream*, 6 April 2017, available at: [https://www.youtube.com/watch?v=i\\_yz0dQmxak](https://www.youtube.com/watch?v=i_yz0dQmxak)
- Rosebell Kagumire, “It's time the UN faced up to its treatment of black people like me”, *The Guardian*, 6 July 2020, available at: <https://www.theguardian.com/global-development/2020/jul/06/its-time-the-un-faced-up-to-its-treatment-of-black-people-like-me>
- Sally Kohn, “This is What White People Can Do to Support #BlackLivesMatter”, *Washington Post*, 6 August 2015, available

at: <https://www.washingtonpost.com/posteverything/wp/2015/08/06/this-is-what-white-people-can->

- Documentary: I Am Not your Negro, trailer: <https://www.youtube.com/watch?v=rNUYdgIyaPM>
- Mini-Series: When They See Us, trailer: <https://www.youtube.com/watch?v=KyIrJeK2DKY&t=16s>
- Documentary: 13th, Trailer: <https://www.youtube.com/watch?v=K6IXQbXPO3I>

#### Cases:

- Plessy v Ferguson 163 US 537 (1896)
- Brown v Board of Education 349 U.S. 294 (1955)
- US Dept. of Justice - Investigation of the Ferguson Police Dept. 4th March 2015, (especially sections D1, D3, D5). Available at: [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)
- CERD General Comment 29

#### Further Readings:

- A Scheingold, S., *“The Politics of Rights: Lawyers, Public Policy, and Political Change”*, The University of Michigan Press, (2nd ed, 2004). In particular the section on the ‘myth of rights’ and Chapter 6 ‘Rights as Resources’
- Crenshaw, K., *“Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”*, Uni Chicago Legal Forum, 139-167, (1989)
- *“Hidden Apartheid: Caste Discrimination against India’s “Untouchables”*. Human Rights Watch & CHR&GJ (NYU) Shadow report to CERD. 12.02.2007. Available here: <https://www.hrw.org/report/2007/02/12/hidden-apartheid/caste-discrimination-against-indias-untouchables>
- Roy, A., *“The Doctor and the Saint: Ambedkar, Gandhi and the Battle Against Caste.”*. Caravan Magazine, 1<sup>st</sup> March 2014 available here: <http://www.caravanmagazine.in/reportage/doctor-and-saint>
- Chimni, B.S., *“The Self, Modern Civilization, and International Law: Learning from Mohandas Karamchand Gandhi’s Hind Swaraj or Indian Home Rule”*, EJIL, Vol. 23 No. 4, 1159–1173, (2012).
- Branch, T. King Years: Historic Moments in the Civil Rights Movement. (2013) chapter 1, 2, 17 & epilogue
- Miller, P. T., *“Postwar struggle for civil rights African American in San Francisco”*, 1945-1975 (2010)
- King, K. A., *“African American Politics”* (2010)

- Pankhurst, E. S., *“The Suffragette; The History of the Women's Militant Suffrage Movement”*, 1905- 1910 (1911) (selected chapters)
- Philips, M., *“The Ascent of Woman: A History of the Suffragette Movement”*, (2004)
- Gandhi, M., *Hind Swaraj*, (1909).
- Nehru, J. *Discovery of India*, (1946)
- Marinovich, G., Silva, J., *“The Bang Bang Club: Snapshots from a Hidden War”*. New York: Basic Books, (2000)
- Media coverage of the Michael Brown and Eric Gardner killings and the Charlestown shooting (2015) in USA.

### Optional Media:

- 12 Years a Slave (2013) Dir. McQueen, S.
- Freedom Riders (2010) Dir. Nelson, S.
- Bang Bang Club (movie) (2010)
- Suffragettes the story of the women who waged the war for social and economic equality. New Jersey Kultur (2008)
- Amistad (1997) Dir. Spielberg, S.
- Eyes on the Prize (1986) Exec Producer Hampton, H.

### Discussion Questions:

1. Keeping the readings in context, what does emancipation mean? How does equality ‘fit’ within the idea of emancipation?
2. What do you think equality means? Can there be more than one form?
3. According to Ambedkar, how is the caste question related to social and political reform?
4. Have the Dalits in India achieved emancipation? How could we measure the level of equality between Dalits and other groups within the population? What might such measurable indicators demonstrate?
5. Consider the cases and presentations for the week and discuss the progression of emancipatory rights for black Americans. Can we say racial minorities in America have achieved de-facto and de-jure equality?
6. Women in the UK got the right to vote on an equal basis with men in the 1940s but do women have social equality with men today?

**WEEK 8: Equality and Non-discrimination**

This week, we will examine how the concepts of equality and non-discrimination have evolved since the UN Charter and UDHR to move beyond formal equality to now push towards a more transformative and participative model. We will identify cases that highlight the historical shortfalls in equality law interpretation and application and how state obligations have evolved as a corrective action against formal equality. We will also examine positive action/positive discrimination.

**Essential Readings:**

- Moeckli, D. et al, Chapter 8, *International Human Rights Law*, 3<sup>rd</sup> ed, (OUP 2018).
- Khaitan, T., “*Affirmative Action*”, Chapter 8, *A Theory of Discrimination Law*, (OUP 2015);
- Klose, F. “*Source of Embarrassment: Human Rights, State of Emergency and the Wars of Decolonization*” as in “*Human Rights in the Twentieth Century: Human Rights in History*, Hoffman, S-L. Cambridge University Press, New York, 237-257, (2011).

**Cases:**

- A.T. v Hungary A/60/38 (part 1 Annex 3) Communication 2/2003, CEDAW Committee, decision 26-Jan-2005
- Case "Relating To Certain Aspects Of The Laws On The Use Of Languages In Education In Belgium" V. Belgium (Merits) 1 EHRR 252 (1968)
- D.H. & Othrs. Czech Republic ECHR Grand Chamber 2007
- Velasquez Rodriguez v Honduras IACtHR Series C, No.4 29-July-1988

**Further readings:**

- Fredman, S., “*Emerging from the Shadows: Substantive Equality and Article 14 of the European Convention on Human Rights*”, *Human Rights Law Review*, (2016)
- Osman v UK (2000) 29 EHRR 245
- Information on the murder of Stephen Lawrence murder in London, UK, (see chpt.1) and the subsequent MacPherson Report, chapters 6 & 8, available at:[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf)
- Fredman, S., “*Discrimination Law*”. Chapter 1, 2nd Ed., (OUP 2010) (especially pp.8-33)
- Moeckli, D., Chpt. 8 ‘*Equality and Non-Discrimination*’ in *International Human Rights Law*, 3 eds Moeckli et al, 157-173, (OUP 2014)
- Gillot v France, HRC Communication No. 932/2000 Un Doc. A/57/40 at 270 (2002)

- Milanovic, M., “*Norm conflict in international law: whither human rights?*” *Duke Journal of Comparative & International Law*. 20(1), 69-131, (2009).
- A. Hathaway, O., “*Do Human Rights Treaties Make a Difference?*” *Yale Law Journal* 111 (2002)
- Oloka-Onyango, J; Tamale, S. “*The Personal Is Political, or Why Women's Rights Are Indeed Human Rights: An African Perspective on International Feminism*” *Human Rights Quarterly*, Vol. 17, No. 4, 691-731, (1995),
- Westen, P. “*The Empty Idea of Equality*” *Harvard Law Review* vol.95 (1981-1982) 537
- Singh, D., “*Evaluating the Magnitude of Female Foeticide Problem of Punjab and Haryana – A Regional Analysis,*” *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* Vol. 19 (10) Ver. VII, 69-78, (Oct. 2014)
- Patel, V., “*A Long Battle for the Girl Child*”, *Economic & Political Weekly* Vol XLVI No. 21 (2011).

### Discussion Questions:

1. Describe the notions of Formal and Substantive Equality and point out the key differences between the two.
2. What elements have been identified to constitute indirect discrimination in the jurisprudence of human rights bodies and courts?
3. What are some of the limitations of formal equality?
4. What does finding a ‘comparator’ mean? When would this be necessary and when would it be difficult?
5. In what case will the differentiation in treatment of individuals be considered justified?
6. What tests are generally employed by international human rights bodies to determine direct discrimination?
7. What does Megret mean by a “tripartite” obligation of implementation of international human rights law?
8. How do the different categories of implementation under the tripartite system differ?
9. Link together the cases with the nature of state obligations and how states (i) defined whether discrimination had taken place and (ii) how this treatment related with a state obligation to respect/protect/fulfil human rights.



### **WEEKS 9-10: Freedom of Religion, Expression, Association, and Assembly**

This week we aim to deliberate four key civil and political (first generation) freedoms within International Human Rights Law. Through their respective sources of law, we aim to answer contemporary controversies on the idea of secularism, whether it is closer to tolerance or homogeneity, and what is the role of value pluralism in deciding this. We also aim to break down what makes a speech ‘hateful’ for it not be protected under freedom of expression. While analysing these questions, the student must be able to point out how freedom of religion and freedom of expression limit each other’s application.

#### **Essential Readings:**

- Articles 18, 19, 20 and 21, ICCPR.
- Danchin, P., “*Suspect Symbols: Value Pluralism as a Theory of Religious Freedom in International Law*,” Yale Journal of International Law Vol 33, No.1, 1-66, (2008)
- Moeckli, D. et al, Chapter 11, *International Human Rights Law*, 3rd ed., (OUP 2018)
- Ahmed, L., “*The discourse of the veil*”, Chapter 8, in ‘Women and Gender in Islam: Historical Roots of a Modern Debate, Yale University Press, (1992).
- McGoldrick, D., “*Religious symbols and State Regulation*”, in Religion and Human Rights, 12, (2017).
- Joseph, S. and Castan, M., Chapter 18, “*Freedom of Expression - Articles 19 and 20*”, in The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary, 3rd ed., (2013)
- Bielefeldt, H., Ghanea, N., Weiner, M., “*Freedom of Expression including Questions Related to Religious Conflicts, Religious Intolerance, and Extremism*”, in ‘Freedom of Religion or Belief: An International Law Commentary’
- Bhatia, G., “*Hate Speech*”, Chapter 6, in ‘Offend, Shock, or Disturb: Free Speech under the Indian Constitution’, (2016).
- <https://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy>

#### **Cases:**

- Leyla Sahin v Turkey ECHR 2005 ECHR 819 / (2007) 44 EHRR 5SAS v France ECHR 2014 to be read with the opinion of Hudoyberganova v Uzbekistan (below)
- Bikramjit Singh v France CCPR/C/106/D/1852/2008 (4 February 2013)

- EEOC v Abercrombie & Fitch Stores Inc., Supreme Court of the United States, No. 14-86, June 1, 2015.
- Samira Achbita v G4S Secure Solutions, NV CJEU (2017) Case C-157/15
- Hudoyberganova v Uzbekistan CCPR/C/82/D/931/2000 (5 November 2004)
- <https://www.theatlantic.com/international/archive/2016/03/flemming-rose-danish-cartoons/473670/>
- <https://www.hrw.org/news/2015/01/07/attack-charlie-hebdo-office>

### Further Readings:

- Deng, F, Chapter 2, *Human Rights Southern Voices*, Twining, W (eds) (CUP 2009)
- Atrey, S., “*Understanding Direct Discrimination Suffered ‘As a Female Muslim’*” in ‘Achbita’ 31st March 2017 <http://ohrh.law.ox.ac.uk/understanding-direct-discrimination-suffered-as-a-female-muslim-in-achbita/>
- Kapur, R., “*Un-Veiling Equality: Disciplining the ‘Other’ Woman Through Human Rights Discourse*” as in ‘Islamic Law and International Human Rights Law: Searching for Common Ground?’ Emon, A.M. Ellis, M.S. Glahn, B. (eds). (OUP 2012).
- Danchin, P. G., “*Who Is the “Human” in Human Rights? The Claims of Culture and Religion*”, 29-4- 2009 available at: [http://politics-of-religious-freedom.berkeley.edu/files/2011/06/Danchin\\_Claims-of-Culture-and-Religion.pdf](http://politics-of-religious-freedom.berkeley.edu/files/2011/06/Danchin_Claims-of-Culture-and-Religion.pdf)
- Chaib, S. O., ‘*Mann Singh wins turban case in Geneva after losing in Strasbourg*’ 19-11-2013 Available at: <http://strasbourgobservers.com/2013/11/19/mann-singh-wins-in-geneva-after-losing-in-strasbourg/>
- Dellatorre, M. & Ferschtman, M. “*Case Watch: A New Perspective on France’s Ban on Religious Headcoverings in Schools*” 15-05-2013 Available at: <http://www.opensocietyfoundations.org/voices/case-watch-new-perspective-france-s-ban-religious-headcoverings-schools>
- Memorandum to the Turkish Government on Human Rights Watch’s Concerns with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf Human Rights Watch Briefing Paper June 29, 2004
- The Leyla Sahin v. Turkey Case Before the European Court of Human Rights, Hoop, T. Chinese Journal of International Law (2006), Vol. 5, No. 3, 719–722
- Balgangadhara, S.N., “*The Heathen in his Blindness: Asia, the West, and the Dynamic of Religion*”, 2<sup>nd</sup> ed. New Delhi: Manohar 2005, (1994).
- Beyer, P. “*De-Centering Religious Singularity: The Globalization of Christianity as a Case in Point*” Numen, Vol.50, No.4, 357-386, (2003)
- Freeman, M. “*The Problem of Secularism in Human Rights Theory.*” Human Rights Quarterly, vol.26, no.2, 375-400, (2004)
- Henkin, L. “*Religion, Religions, and Human Rights*” The Journal of Religious Ethics, vol.26, No.2, 229-239, (1998)

- Music Video: Hijabi (Wrap my Hijab), available at: [https://www.youtube.com/watch?v=XOX9O\\_kVPeo](https://www.youtube.com/watch?v=XOX9O_kVPeo)
- CNN Newsclip, Heba Ahmed and Mona ElTahawy Debate, available at: <https://www.youtube.com/watch?v=kWJRam64dQY&t=20s>

**Discussion Questions:**

1. What is the relationship between freedom of thought, expression, association and religion?
2. Are the rights to religion, and expression derogable according to Article 4 of the ICCPR. Under what circumstances may states derogate from articles 18, 19, 20 and 21 of the ICCPR?
3. Under what circumstances can states limit/derogate from articles 18, 19 and 21 of the ICCPR? What test must they meet in order to ensure that any limitations are in accordance with international human rights law?
4. The separation of the state from religion and a secular approach to policy and law is often seen as progressive and as respectful and tolerant of difference. Is there a singular definition of what secularism means?
5. Is there a coherent notion of religious freedom in international legal theory? If not, why?
6. Different complaint hearing mechanisms have given different opinions on whether a restriction on wearing religious clothing constitutes discrimination. Compare and contrast the work of these mechanisms.
7. How could principles of direct and/or indirect discrimination be relevant to the cases?
8. Which state obligation (from respect, protect, or fulfil) would be most relevant to advance human rights centred arguments to allow the wearing of religiously motivated clothing/symbols.

## **WEEK 11: National Security, Humanitarian Intervention, and Torture**

During this session we examine the right to life and the prohibition against enforced disappearances, torture, cruel, inhuman and degrading treatment and punishment which are core human rights that protect the integrity of the human person. We explore both the status and scope of the right to life and the prohibition against torture.

### **Essential Readings:**

- Alston, Goodman, “*Norm Regression: The Norm Against Torture*’ in *International Human Rights*”, 1st Edition, 238-267, (2012)
- Articles 4, 6, 7, 9, 10, 12, 14, 17 ICCPR
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Amnesty International, “Denied: Failures in Accountability for Human Rights Violations by Security Force Personnel in Jammu and Kashmir,” 2019
- Moeckli, D. et al, Chapter 9 and 29, *International Human Rights Law*, 3rd ed, (OUP 2018)
- Chesterman, S., “*Why Not Torture?*” December 17, 2014 (working paper)
- Koh, H. “*A world without torture*”, Columbia Journal (lecture notes)
- Nowak, M., “*What Practices Constitute Torture?: US and UN Standards*” (2006)
- Luban, D., “*Liberalism, Torture and the Ticking Bomb*” 91 VA. L. Rev. 1425-1461 (2005)

### **See also:**

- Chinkin, C., Kaldor, M., “*The ‘Doctrine of Humanitarian Intervention’: and how it exposes the absence of any serious intention to help Syrians*”, Open Democracy, 22 April 2018, available at: <https://www.opendemocracy.net/en/doctrine-of-humanitarian-intervention-and-how-it-exposes-absence-of-an/>
- “*War in Iraq: Not a Humanitarian Intervention*”, Human Rights Watch, 25 January 2004, available at: <https://www.hrw.org/news/2004/01/25/war-iraq-not-humanitarian-intervention>

- Documentary: “For Sama” (2019), trailer available at: <https://www.youtube.com/watch?v=vsvBqtg2RM0>
- Documentary: Taxi to the Dark Side, available at: <https://www.youtube.com/watch?v=M8hCf3VvFOk>
- Documentary: “Kashmir’s Torture Trail”, excerpt at: <https://www.theguardian.com/world/video/2012/jul/10/kashmir-torture-trail-video>

### Cases:

- Ireland v. United Kingdom, 25 Eur. Ct. H.R. (ser. A) 25 (1978);
- State of Jammu and Kashmir vs. Lakhwinder Kumar, Criminal Appeal No. 624/2013 and 625/2013, Judgement dated 25 April 2013, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40332> (accessed 9 April 2015)
- Prakash Singh and Ors. vs. Union of India (UOI) and Ors, Writ Petition (Civil) No. 310 of 1996, dec’d on 22.09.2006

### Further Readings:

- Naga People’s Movement of Human Rights vs. Union of India, Writ Petition Nos. (C) Nos. 5328/80, 9229-30/82 Civil Appeals Nos. 721/85, 722/85, 723/85, 724/85, 2173-76/91, 2551/91 and Writ Petitions (C) Nos. 13644-45/84, Judgement dated 27 November 1997, <http://judis.nic.in/supremecourt/imgs1.aspx?filename=13628> (accessed 9 April 2015). (Naga People’s Movement of Human Rights vs. Union of India).
  - Lokaneeta, J., “*Defining an Absence: “Torture” Debate in India.*”, Economic & Political Weekly, Volume 49, No. 26/27, (June 28, 2014).
  - UN Convention for the Protection of All Persons from Enforced Disappearance
  - UN CAT Committee Concluding Observations on the combined third to fifth periodic reports of the USA. CAT/C/USA/CO/3-5 19th December 2014 available here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/247/23/PDF/G1424723.pdf?OpenElement>
  - National Human Rights Commission, “*Need for the investigating agencies to keep the complainants/victims informed of the progress of investigation*” Measures to Improve Police- Public Relationship and Confidence, 22 December 1999, p.75, section II(c)(e) & (f), <http://nhrc.nic.in/Documents/sec-4.pdf>
  - CAT Shadow report CCR, HRC and IHRLC Berkeley Law Nov. 2014: The United States’ Compliance with the United Nations Convention Against Torture with Respect to Guantánamo Bay Detainees and the Cumulative Impact of Confinement, the Abuse of Detainees Post Release, and the Right to Redress. Available here: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=930&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=930&Lang=en)
- or:

- The United States' Compliance with the Convention Against Torture with Respect to the Classification of Information Regarding the Ill-Treatment of Detainees in Secret Detention, James G. Connell, III, representative of Ammar al Baluchi, a prisoner at Guantanamo Bay. Available here: [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT\\_CAT\\_CSS\\_USA\\_18485\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_CSS_USA_18485_E.pdf)  
or:
- Senate Select Committee on Intelligence: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program. December 2014 available at: <http://www.intelligence.senate.gov/study2014/findings-and-conclusions.pdf>  
or:
- Redress: The Armed Forces (Special Powers) Act, 1958 in Manipur and other States of the Northeast of India: Sanctioning repression in violation of India's human rights obligations, 18 August 2011 available here: [http://www.redress.org/downloads/publications/AFSPA\\_180811.pdf](http://www.redress.org/downloads/publications/AFSPA_180811.pdf)
- Report of the OHCHR 2014 - The use of torture-tainted information and the exclusionary rule -A/HRC/25/60
- Andrew Bellamy, No Pain No Gain, Torture and Ethics in the War on Terror, (not justified but may be necessary in some exceptional circumstances), <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-2346.2006.00518.x/abstract>
- National Human Rights Commission Report Torture and gang rape by police officers in Tripura - Case No. 5/23/2003-2004-WC available here: <http://nhrc.nic.in/PoliceCases.htm>
- UN Committee Against Torture (CAT), UN Committee against Torture: Conclusions and Recommendations, United States of America, 25 July 2006
- Rodley, N. & Pollard M., *"The Treatment of Prisoners Under International Law"*, (2009)
- Hood & Hoyle, *The Death Penalty: A World Wide Perspective* (2008)
- Malala Yousufzahi "I am Malala" (2012)
- Inter-American Convention on to Prevent and Punish Torture (1985)
- Validzhon Khalilov v. Tajikistan, U.N. Doc. CCPR/C/83/D/973/2001 (2005)
- C. Johnson v. Jamaica, CCPR, A/54/40 20 October 1998; CCPR/C/64/D/592/1994 (1998)
- Hirsi Jamaa and others v. Italy (the Boat People), European Court of Human Rights, Application no.27765/09, Judgment of 23 February 2012 (case summary)
- Rasul v. Bush 542 U.S. 466 (2004)

### Discussion Questions:

1. Within the essential readings a moral absolutist perspective is presented promoting the absolute abolition of torture, largely for moral reasons. How strong are these arguments? When do you think this argument was most influential, do you feel the argument still has the same level of support that it had then?

2. The international prohibition is a customary international law. It has also been codified in international treaties. Despite this there is wide recognition that many states torture. Relying on the readings and class discussions substantiate this claim. What is the cause of this gap?
3. Give some examples of acts that amount to a) torture b) cruel, inhumane and degrading treatment or punishment.
4. Are state obligations to prevent torture, cruel, inhumane and degrading treatment or punishment positive or negative or both? Provide examples for both.
5. What does the right to life actually protect? Is every killing a violation of the right to life? If not, why not?
6. What is a disappearance? What human rights are potentially violated when a person is subject to an enforced disappearance?
7. How do we understand the idea of shifting standards for torture? Is this flexibility desirable in a Human Rights Regime?
8. The 'ticking-bomb' theory has often been used as a potential justification for torture, on what basis is this argument convincing, if it is?
9. Optional: Why do you think the USA has not ratified the UNCAT but has ratified the Inter- American Convention to Prevent and Punish Torture?

**WEEK 12: Gender and Human Rights**

This week we will analyse gender and human rights with an emphasis on Indian and other Asian geographies and how they differ from international cases. We will identify where to find international human rights laws that, in Gable’s model, refer to either reproductive rights (RRs), or right to health (R2H), and which collectively form the right to reproductive health (R2RH). The implementation of these laws will then be analysed from a patient-centric, gender-sensitive perspective.

**Essential Readings:**

- MacKinnon, C., “*Are Women Human?*” in ‘Are Women Human? And Other International Dialogues’, pp. 41-43, (2007).
- Charlesworth, H., “*The Hidden Gender of International Law*”, 16 TEMP. INT’L & COMP. L.J. 93 (2002)
- Gable, L., “*Reproductive Health as a Human Right*” 60 CaseWResLRev 957, pp.958-964 & 968-994, (2010)
- A Womb of One’s Own, EPW, URL: <https://www.epw.in/engage/article/womb-ones-own-privacy-and-reproductive-rights>
- ICCPR art. 2, 6, 17 available here: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- ICESCR art. 12 available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- CESCR General Comment No. 22 (2016) on the Right to sexual and reproductive health. Available here: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=11)
- CEDAW art. 12 available here: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article12>
- CEDAW General Recommendation 24 – Right to Health (1999) available here: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>
- Constitution of India, Article 21: “21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.”
- Constitution of India, Article 47: “47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of



the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.” Available at: [http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss\(7\).pdf](http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%20Pg.Rom8Fsss(7).pdf)

**See also:**

- Film: Wadjida, trailer: <https://www.youtube.com/watch?v=3koigluYOH0>
- Documentary: How to Survive a Plague. Trailer: [https://www.youtube.com/watch?v=haEPLCA\\_H2Y](https://www.youtube.com/watch?v=haEPLCA_H2Y)
- Documentary: Disclosure. Trailer: <https://www.youtube.com/watch?v=ysbX6JUlaEc>
- Film: A Fantastic Woman. Trailer: <https://www.youtube.com/watch?v=PJHex4ZitgA>
- Documentary: Girl-Hearted, Excerpt: <https://vimeo.com/194801194>

**Cases:**

**Access to Abortion International Comparative Perspectives:**

- Devika Biswas v Union of India & Others. WP (Civil) No.950f 2012. Judgment delivered on 14.09.2016
- Mellet v Ireland, Human Rights Committee, Doc No: CCPR/C/116/D/2324/2013 dec'd: 31 March 2016
- Whole Woman's Health et al. V. Hellerstedt, Commissioner, Texas Department of State Health Services, US SC argued March 2, 2016—Decided June 27, 2016. 579 US \_\_ (2016) available at: [https://www.supremecourt.gov/opinions/15pdf/15-274\\_p8k0.pdf](https://www.supremecourt.gov/opinions/15pdf/15-274_p8k0.pdf)
- Maria de Lourdes da Silva Pimentel (Alyne) v Brazil, Communication No. 17/2008 decision 30th November 2007 Doc. No. CEDAW/C/49/D/17/2008
- Laxmi Mandal v Deen Dayal Harinagar Hospital and Ors. 172-2010-DLT9
- Prakash Mani Sharma v. Government of Nepal (SCN, Writ No.064)

**Sexual Orientation and Gender Identity**

- Toonen v. Australia, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994). Available online: < <http://www1.umn.edu/humanrts/undocs/html/vws488.htm>.>
- Case of Dudgeon v UK, 1981 (ECHR) 5 available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57473%22%5D%7D>
- Navtej Singh Johar v Union of India, 2017 (10) SCC 1

- Lawrence v Texas, 539 U.S. 558 (2003)

### Further Readings:

- Otto, D., “*Queering Gender [Identity] in International Law*” 33(4) Nordic Journal of Human Rights, 299, (2015)
- Ely Yamin, A. & Lander, F., “*Implementing a Circle of Accountability: A Proposed Framework for Judiciaries and Other Actors in Enforcing Health-Related Rights*”, Journal of Human Rights, Vol. 14, No. 3, 312-331, (2015).
- Philip M., Khan M.E., Sebastian, D., “*Unintended Pregnancy and Abortion in India: Country Profile Report with Focus on Bihar, Madhya Pradesh and Orissa,*” Population Council, New Delhi, (2014) URL: [https://www.popcouncil.org/uploads/pdfs/2014STEPUP\\_IndiaCountryProfile.pdf](https://www.popcouncil.org/uploads/pdfs/2014STEPUP_IndiaCountryProfile.pdf).
- Magill, S., “*Five Years Indian Woman denied Abortion....*”, The Wire <https://thewire.in/gender/five-years-indian-woman-denied-abortion-died-will-ireland-finally-reform-laws>
- J. Cook, R., “*Human Rights and Maternal Health: Exploring the Effectiveness of the Alyne Decision*” 41(1) Journal of Law, Medicine & Ethics 103, (2013).
- Kaur, J. “*The role of litigation in ensuring women’s reproductive rights - an analysis of the Shanti Devi judgement in India*” Reproductive Health Matters, Vol. 20, No.39, 21-30, (2012)
- Jain, D. & Rozario, N., “*Voices from the Field: Women’s Access to Contraceptive Services and Information in Haryana, India*” by Centre for Health Law, Ethics and Technology, O.P. Jindal Global University in Collaboration with Centre for Reproductive Rights, New York, CHLET p.16-25 Available at: <http://www.jgu.edu.in/chlet/PDF/ReportVOICES.pdf>
- Female sterilization failure: Review over a decade and its clinic-pathological correlation. Date SV, Rokade J, Mule V, Dandapannavar S. Int J Appl Basic Med Res. 2014 Jul;4(2):81-5. doi: 10.4103/2229-516X.136781. <http://www.ncbi.nlm.nih.gov/pubmed/25143881>
- Unsafe abortions: Eight maternal deaths every hour. The Lancet, Volume 374, Issue 9698, Page 1301, 17 October 2009 [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(09\)61799-2/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(09)61799-2/fulltext)
- Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa art 1, (f), (g), (j), (k); art 2; art 5; art 14. Available here: [http://www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf)

- CESCR General Comment 14: Right to the Highest Attainable Standard of Health (2000) paras 8, 9, 12, 14. Available here: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f2000%2f4&Lang=en) Achyut Prasad Kharel v Nepal 2004 Writ No. 3352 of 2061 BS (2004 AD)
- Ngwena, C. 'Introduction to the Symposium Issue: Reproductive and Sexual Health and the African Women's Protocol' 16 Wash. & Lee J.C.R. & Soc. Just. 1 (2009)
- Beltran Y Puga, A., "*Paradigmatic Changes in Gender Justice: The Advancement of Reproductive Rights in International Human Rights Law*" 3 Creighton Int'l & Comp. L.J. 158 (2012)
- Cook, R & Dickens B., "*Human Rights Dynamics of Abortion Law Reform*", Human Rights Quarterly 1, (2003)

### Discussion Questions:

1. How, and where, are rights (such as the right to life, the right to the highest attainable standard health) articulated regarding reproductive rights?
2. How present are men and women's reproductive needs articulated within IHRL?
3. Why do women have a disproportionate need for reproductive health rights? How can support for women only services be justified using an equality based framework?
4. How, according to Gable, may the ICCPR be used to develop a right to reproductive rights?
5. How, according to Gable, may the ICESCR be used to develop a right to reproductive health?
6. Has a right to reproductive health been recognised in IHRL and/or by courts? Demonstrate with reference to a source of law/judgment. Has Gable's conception been expanded by complaint hearing mechanisms?
7. Compare and contrast the articulations of health between the ICESCR and CEDAW.
8. How do you feel courts should interpret the right to equality between men and women with regard to reproductive health services?

**WEEK 13: Economic and Social Rights**

This week we will focus on economic and social rights. We will first analyse the difference between positive obligations and negative obligations, and then determine the difference (and overlap) between civil and political rights, and socio-economic rights. Then, we will focus on the normative content within these rights, while focusing on how different courts have dealt with these rights.

**Essential Readings:**

- Moeckli, D. et al, Chapter 10, “*International Human Rights Law*”, 3rd edition, (OUP 2018).
- Moeckli, D. et al, Chapter 12, “*International Human Rights Law*”, 3rd edition, (OUP 2018).
- Beijer, M., “*The Development of Positive Obligations under the European Convention on Human Rights*”, Chapter 3, ‘The Limits of Fundamental Rights Protection by the EU’, (2017)
- M. Pasqualucci, J., “*The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System*”, 31 Hastings ICLR, (2008)
- Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. 4th August 2015 UN Doc. A/70/270 available here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N15/242/95/PDF/N1524295.pdf?OpenElement>
- CESCR General Comment 3: The Nature of States Parties’ Obligations (1990)
- ICESCR Article 13 & 14,
- ICCPR Article 18
- CRC Articles 28 and 29
- CEDAW Article 10
- CRPD Article 24
- Report of the Special Rapporteur on the Right to Education, on the promotion of equality of opportunity in education, Kishore Singh, 18 April 2011 A/HRC/17/29
- CESCR General Comment 13: The Right to education (1999)
- CESCR General Comment 20: Non-discrimination in economic, social and cultural rights. (2009)
- UN Millennium Development Goals
- Chomsky, N., “*Human Rights in the New Millenium*”, LSE Notes, (2009). available at- <https://chomsky.info/20091029/>

**Cases:**

- Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors. AIR (1993) SC 2178 33

- Olga Tellis & Othrs. V Bombay Municipal Corporation & Othrs. AIR (1986) SC 180, 1985 SCC (3) 545.
- Government of the Republic of South Africa and Others vs. Grootboom (Grootboom) 2001 (1) SA 46 (CC), 2000 (11) BCLR 1169 (CC) available here: [https://www.escr-net.org/sites/default/files/Grootboom\\_Judgment\\_Full\\_Text\\_%28CC%29\\_0.pdf](https://www.escr-net.org/sites/default/files/Grootboom_Judgment_Full_Text_%28CC%29_0.pdf)
- Minister of Health v. Treatment Action Campaign, Constitutional Court of South Africa, Case CCT 8/02, 5 July 2002
- Child Exploitation and the FIFA world cup, URL: [https://childhub.org/en/system/tdf/library/attachments/1674\\_Child-Protection-and-the-FIFA-World-Cup-FINAL\\_original.pdf?file=1&type=node&id=6259](https://childhub.org/en/system/tdf/library/attachments/1674_Child-Protection-and-the-FIFA-World-Cup-FINAL_original.pdf?file=1&type=node&id=6259)
- Addressing the Human Cost of Assam Tea, URL: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620876/bp-human-cost-assam-tea-101019-en.pdf>

### Further Readings:

- In preparation for class please take a look at the work of the UN Special Rapporteur on the Right to Education: <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx> Committee on Economic, Social and Cultural Rights, General Comment 16 (2005): The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights. 11th August 2005
- Report Of The Special Rapporteur On Adequate Housing As A Component Of The Right To An Adequate Standard Of Living, Miloon Kothari, Commission On Human Rights Sixty-First Session, E/CN.4/2005/48, 3rd March 2005
- Women And The Right To Adequate Housing, UN Human Rights, New York And Geneva, 2012, HR/PUB/11/02.
- Vidhi Centre for Legal Policy ‘Right to Education and Minority Rights’ (2016). Available here: <https://vidhilegalpolicy.in/reports-1/2016/1/19/right-to-education-and-minority-rights>
- Ray, P., “*Leaving Home, Leaving Rights*” Journal of Indian Law and Society Vol.4 Winter 2013 p.81- 106
- Panda, P., Agarwal, B., “*Marital Violence, Human Development And Women’s Property Status In India*”, World Development Vol. 33, No. 5, pp. 823–850, (2005).
- CEDAW GR 29 - Economic consequences of marriage, family relations and their dissolution (2013) available at: <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>
- Otto, D., “*Gender Comment: Why Does the UN Committee on Economic, Social and Cultural Rights Need a General Comment on Women?*” 14 Can. J. Women & Law 1 (2002)

- Khosla, M., “*Making Social Rights Conditional: Lessons from India*”, International Journal of Constitutional Law 8 (4) pp. 739-765, (2010) (please read the section on the right to education)
- Committee on the Rights of the Child, General Comment no.1 (2001)

**Discussion Questions:**

1. What is the scope of the right to education? Does it mean there should be state funded free education for all children and adults?
2. What has the UN Committee on the Rights of the Child said about the quality of education?
3. How does the right to education intersect with other human rights, including the right to life, religion, expression and the prohibition of non-discrimination?
4. What practical challenges do states face when attempting to implement the right to education at the domestic level?
5. What do ‘multiplier’ and ‘cornerstone’ refer to with reference to socio-economic rights?
6. How does Fredman draw distinctions between legal and policy (distributive) obligations? How does this claim affect socio-economic rights’ justiciability?
7. What is the significance of the *Unni Krishnan* case?
8. Does a “progressive realization” standard apply for implementation of all ICESCR Rights?

**Week 14: Human displacement and human rights in crisis**

This week will focus on the rights of displaced persons, including refugees, asylum seekers. We will study the human rights conditions which often contribute to flight, as well as the conditions in countries of asylum and refuge. Students will question whether international refugee law can offer human protection for displaced persons. Students will also become conscious of distinct refugee regimes in the Global North and South, and the disparity in international responses. Specific attention will be paid to familiarizing students with first-hand accounts of displaced people

**Essential Readings:**

- Chimni, B.S., “*The Geopolitics of Refugee Studies*”, *Journal of Refugee Studies*, Volume 11, Issue 4, pp 350–374, (1998).
- Hathaway, J.C., “*Reconceiving Refugee Law as Human rights protection*”, 4(2) *J. Ref. Studies*, 113- 131
- Nayeri, D., “*The Ungrateful Refugee: we have no debt to repay*”, *The Guardian*, 4 April 2017, available at: <https://www.theguardian.com/world/2017/apr/04/dina-nayeri-ungrateful-refugee>
- Kingsley, B. “*The New Odyssey: The Story of Europe's Refugee Crisis*”, Chapter 1, London: Guardian Books, (2016)
- Schmalz, D., “*Will the ECtHR Shake up the European Asylum System*”, *Verfassungsblog On Matters Constitutional*, 30 November 2018, <https://verfassungsblog.de/will-the-ecthr-shake-up-the-european-asylum-system/>

**Cases:**

- *Ioane Teitiota v. New Zealand* (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020, available at: <https://www.refworld.org/cases,HRC,5e26f7134.html>
- *Case of N.D. and N.T. v. Spain*, Applications No. 8675/15 and 8697/15, Grand Chamber, European Court of Human Rights  
[https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],\[%22itemid%22:\[%22001-201353%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-201353%22]})
- *Case of Ramadan v. Malta*, Application No. 76136/12, Fourth Section, European Court of Human Rights  
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-163820%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-163820%22]})
- *Case of Hoti v. Croatia*, Application No. 63311/14, First Section, European Court of Human Rights  
[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-182448%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-182448%22]})
- **Akmal: Add a few cases on Rohingyas and Uighurs**

**See also:**

- Ted Talk: Alexander Betts, “Our refugee system is failing. Here's how we can fix it”, available at: <https://www.youtube.com/watch?v=kLIfGflNp8>
- Film: Capernaum. Trailer: <https://www.youtube.com/watch?v=ULUo0048xZE>
- Documentary: Human Flow. Trailer: [https://www.youtube.com/watch?v=DVZGyTdk\\_BY](https://www.youtube.com/watch?v=DVZGyTdk_BY)

***Week 15: Review***

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