ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

International and National Perspectives

MANOJ KUMAR SINHA

MANAK PUBLICATIONS PVT. LTD
# CONTENTS

Preface vii  
Acknowledgements ix

1. Introduction 1
   1. Introduction 1  
   2. Definition of Human Rights 4  
   3. Development of Human Rights in India 5  
   4. Development of Human Rights in International Law 7  
   5. Positivism 10  
   6. Socialist Theories 12  
   8. Promotion of Human Rights within the United Nations 14  
   9. The Three Treaties: Drafting Debates 16  
10. Drafting of the International Covenant on Economic, Social and Cultural Rights 19  
11. The European Social Charter 21  
12. The American Convention 22  
Enforcement of Economic, Social and Cultural Rights

15. Jus Cogens 29
16. Observations on a Hierarchy of Norms 35
17. Relation Between Treaties and Customary Law and Human Rights Protection 36
18. Conclusion 40

2. Enforcement of Economic, Social and Cultural Rights 41
   1. Introduction 41
   2. Submission of State Party Report 47
   3. The Nature of Obligations under the ICESCR 53
   4. Draft Optional Protocol to ICESCR 58
   5. Implementation of Economic, Social and Cultural Rights Through UN Specialized Agencies 60
   6. The Concept of the Right to Development and Economic, Social and Cultural Rights 61
   7. Implementation Mechanism under the European Social Charter 65
   8. Implementation Mechanism under the American Convention on Human Rights 71

3. Core Economic, Social and Cultural Rights under ICESCR 101
   1. Introduction 101
   2. Right to Work: Article 6 of the ICESCR 103
   3. Right to Just and Favourable Conditions of work: Article 7 of the ICESCR 106
   4. Right to Form Trade Unions: Article 8 of the ICESCR 110
   5. Right to Social Security: Article 9 of the ICESCR 114
   6. Protection and Assistance Should be Accorded to the Family: Article 10 of the ICESCR 116
   7. Right to Adequate Standard of Living: Article 11 of the ICESCR 119
   8. Right to Highest Attainable Standard of Health: Article 12 of the ICESCR 127
   9. Right to Education: Article 13 of the ICESCR 133
10. Right to Education: Article 14 of the ICESCR 145
11. Right to Take Part in Cultural Life: Article 15 of the ICESCR 147
12. Conclusion 154

4. Implementation Mechanism Available at National Level: The Indian System 157
   1. Introduction 157
   2. The Constitutional Regime 158
   3. Drafting Debate of the Directive Principles of State Policy 161
   5. Justiciability of Economic, Social and Cultural Rights 165
   6. Fundamental Rights versus the Directive Principles of State Policy 167
   8. Indian Constitution and Due Process of Law 171
   9. Implementation Mechanism at National Level 179
   10. Access of Public Interest Litigation 187
   11. Role of the National Human Rights Commission in Implementation of Human Rights 191
   12. Role of Non-governmental Organisations (NGOs) at National Level 200
   13. Role of Media in Promotion of Human Rights 201
   14. Conclusion 203

5. Jurisprudence of Economic, Social and Cultural Rights
   (Articles 6 to 10 of the ICESCR in India) 205
   1. Right to work 205
   3. Right to Just and Favourable Conditions of Work 216
   4. Right to Form Trade Unions 223
   5. Right to Social Security 229
   6. Protection and Assistance should be Accorded to the Family 235
Enforcement of Economic, Social and Cultural Rights

6. Jurisprudence of Economic, Social and Cultural Rights
   (Articles 11 to 15 of the ICESCR) 243
   1. Right to Adequate Standard of Living 243
   2. Right to Food 252
   3. Right to the Highest Attainable Standard of Health 261
   4. Right to Education in India 277
   5. Right to Take Part in Cultural Life 288
   6. Right to Disabled Persons in India 298
   7. Right to Older Persons in India 301

7. Conclusion 305

Bibliography 315

Index 343