

LL.B VI SEMESTER

SUBJECT- LAW OF HUMAN RIGHTS

TOPIC- EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

The **European Convention on Human Rights (ECHR)** (formally the **Convention for the Protection of Human Rights and Fundamental Freedoms**) is an international convention to protect human rights and political freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity

The European Convention on Human Rights has played an important role in the development and awareness of Human Rights in Europe. The development of a regional system of human rights protection operating across Europe can be seen as a direct response to twin concerns. First, in the aftermath of the Second World War, the convention, drawing on the inspiration of the Universal Declaration of Human Rights can be seen as part of a wider response of the Allied Powers in delivering a human rights agenda through which it was believed that the most serious human rights violations which had occurred during the Second World War could be avoided in the future. Second, the Convention was a response to the growth of Communism in Central and Eastern Europe and designed to protect the member states of the Council of Europe from communist subversion. This, in part, explains the constant references to values and principles that are "necessary in a democratic society" throughout the Convention, despite the fact that such principles are not in any way defined within the convention itself

The Convention consists of three parts.

PART I. Fundamental rights and freedoms. (Articles 2 to 18)

PART II. Court and its rules of operation (Articles 19 to 51)

PART III. Various concluding provisions (Articles 52 to 59)

Obligation to respect human rights-

Article 1 simply binds the signatory parties to secure the rights under the other Articles of the Convention "within their jurisdiction". In exceptional cases, "jurisdiction" may not be confined to a Contracting State's own national territory; the obligation to secure Convention

rights then also extends to foreign territories, such as occupied land in which the State exercises effective control

PART I. Fundamental rights and freedoms. (Articles 2 to 18)

Article 2 – Right to life

- Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - ✓ in defence of any person from unlawful violence;
 - ✓ in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - ✓ in action lawfully taken for the purpose of quelling a riot or insurrection

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment

Article 4 – Prohibition of slavery and forced labour

- No one shall be held in slavery or servitude.
- No one shall be required to perform forced or compulsory labour.
- For the purpose of this article the term "forced or compulsory labour" shall not include:
 - ✓ any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - ✓ any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - ✓ any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - ✓ any work or service which forms part of normal civic obligations

Article 5 – Right to liberty and security

Article 5 provides that everyone has the right to liberty and security of person. Liberty and security of the person are taken as a "compound" concept – security of the person has not been subject to separate interpretation by the Court.

Article 5 provides the right to liberty, subject only to lawful arrest or detention under certain other circumstances, such as arrest on reasonable suspicion of a crime or imprisonment in fulfilment of a sentence. The article also provides those arrested with the right to be informed, in a language they understand, of the reasons for the arrest and any charge they face, the right of prompt access to judicial proceedings to determine the legality of the arrest or detention, to trial within a reasonable time or release pending trial, and the right to compensation in the case of arrest or detention in violation of this article

Article 6 – Right to a fair trial

Article 6 provides a detailed right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged with a criminal offence (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter)

Article 7 – No punishment without law

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

- This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

- Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

Article 9 – Freedom of thought, conscience and religion¹

Article 9 provides a right to freedom of thought, conscience and religion. This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society"

Article 10 – Freedom of expression

Article 10 provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas, but allows restrictions for:

- interests of national security
- territorial integrity or public safety
- prevention of disorder or crime
- protection of health or morals
- protection of the reputation or the rights of others
- preventing the disclosure of information received in confidence
- maintaining the authority and impartiality of the judiciary

Article 11 – Freedom of assembly and association

Article 11 protects the right to freedom of assembly and association, including the right to form trade unions, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society"

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status

Article 15 – Derogation in time of emergency

- In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
- No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
- Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.