
ASSESSING ANTI-DISCRIMINATION MANDATES UNDER THE UNITED NATIONS SYSTEM WITH REFERENCE TO THE DURBAN DECLARATION & PROGRAMME OF ACTION

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ABSTRACT

The foundations of human rights and rule of law lie on the tenet of equality. It ensures that any entity- be it a sovereign state or an individual, are held at the same standards as their counterparts. Any unjust discrimination would violate the structure and mandate of human rights. The United Nations Organisation has been established on the core principle of equality of all. It therefore ensures that no discrimination is meted out to anyone across the world. The anti-discrimination mandate under the United Nations System includes various deliberations made in respect to human rights in general and preventing discrimination in particular. This article would assess the anti-discrimination directives of the United Nations in respect to these deliberations. It would specifically focus on the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in the year 2001. The article would look into the declaration made and the programme of action advanced in the said Conference. It would critically examine the declaration and the programme of action in light of contemporary developments and would highlight the reasons for its apparent ineffectiveness. Finally, the article would put forward certain suggestions that can help in making the Durban Declaration and Programme of Action operative in its objective to combat racism, eradicate racial discrimination, disregard Xenophobia and address related intolerance.

1. INTRODUCTION

The world that we live in is an assemblage of varied cultures, beliefs, practices and ideologies. It is characterized by heterogeneity that interacts, and sometimes opposes each other. Anthropologically, we are classified as a single species of mammals- the homo sapiens. But there exists a lot of differences among this single stratum of species. We are divided, or rather unique, in terms of our culture, nationality, origins, beliefs and practices.

This uniqueness brings with itself two chief facets of human civilization. On the one hand, this uniqueness displays the development in human civilization over the years. Existing of multiplicity of cultures symbolizes humans' ability to mature in a given landscape. It has led to the growth of human civilization as a whole by contributing to various systems of knowledge associated with various Secondly, the uniqueness is also associated with struggles amongst the members- taking the shape of disagreements and conflicts.

These conflicts are manifested through various modes across the ages in the form of battles, wars and certain practices which can be considered to be a blot on the history of human civilization. Practices such as racism, discrimination, slavery are the instances that have ricochet in form of uncomfortable truths to the human history. These practices continued for a long time and some were only abolished completely as recent as 1981 when Mauritania became the last country to abolish slavery.¹

However, abolishing or condemnation of such practices do not correlate with their elimination. They exist within our world through informal and in some cases, formal mechanisms as well. Informal mechanism are more subjective practices, heavily individualized which are based on personal beliefs or cultures. The formal mechanism includes policies that are aimed at segregation of a section of people on irrational grounds. These policies stem from discrimination and in fact, promote discrimination. Their legitimacy is often backed by the nature of the state that is, either through the means of autocracy and in some countries through the legitimizing persuasion of theocracy.

But there exists a formal system of checks and balances at the international stage that works through several modes to restraint any unfair state activity. The role of international fora in

¹ John D. Sutter, *Slavery's Last Stronghold*, CNN (July 20, 2025) <https://edition.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html>.

such scenarios is that of utilizing its power of persuasion and deliberation and thereby addressing the states that violates human rights or frames such policies that may hamper the human rights of its citizens.

Any policy undertaken by the State is part of its municipal law. The concept of State sovereignty backs the dicta that a State has all the rights to legislate in its own affairs, or in matters that fall within its territorial jurisdiction. Often, this concept of sovereignty has been used as a validation for policies that *prima facie* harm the human rights of its citizens. The rules put up by the States often tend to cater to a particular stratum of population which ultimately breeds and propagates discrimination. Thus, while state sovereignty is paramount and should be respected, it often becomes the cover for discriminatory policies by state and makes them immune to international scrutiny.

2. MANDATE AGAINST DISCRIMINATION UNDER THE UNITED NATIONS REGIME

The United Nations system originated in the post second world war era to address these concerns. The Charter of the United Nations, though its Article 1(3) underlines the purpose of the United Nations as promoting and encouraging human rights.² The Article further emphasizes the resolve of the United Nations to promote and encourage in respect to fundamental freedoms without distinction of race, sex, language, or religion.³ This was a significant step in the international jurisprudence as discrimination was considered one of the major problems plaguing the world and was equated similarly as an act of war.

The world had seen the horrors of racial discrimination of the Nazi Germany regime during the second world war. Thus, the United Nations aimed that in a post war world, no room for such discriminatory measures is left.⁴ Therefore, the successive years witnessed multiple Conventions under the aegis of United nations that specifically targeted various forms of discrimination. These instruments became a bedrock of an anti-discriminatory policymaking at international as well as municipal levels. They outlined the basic characteristics of human rights from the perspective of equal treatment, equality and individual dignity.

² UNITED NATIONS, UNITED NATIONS CHARTER, CHAPTER I: PURPOSES AND PRINCIPLES (1945), <https://www.un.org/en/about-us/un-charter/chapter-1>.

³ MALCOM N. SHAW, INTERNATIONAL LAW 217 (8th ed. 2017).

⁴ STEPHEN HALL, PRINCIPLES OF INTERNATIONAL LAW 611 (5th ed. 2016).

The Universal Declaration of Human Rights, 1948 (UDHR) was the first major document that specified on the importance of Human Rights and addressed the international community to perceive them not as a sub-species of rights but as distinctive rights. Article 2 of the UDHR states that every individual is entitled to all the rights and freedoms underlined in the document without any distinction or discrimination on the basis of race, colour, sex, language, religion, et al.⁵ Thus, the Article provided that equality and non-discrimination is the basic human right that should be available to all individuals.

Another instrument that is specifically in relation to Human Rights is The International Covenant on Civil and Political Rights (ICCPR), which was adopted through General Assembly Resolution 2200A on 16th December 1966. The Preamble of the Covenant underscores the principles of the UN Charter and establishes that human rights are inalienable and are the foundation of freedom, justice and peace in the world.⁶

Article 2(1) of The ICCPR obliges the signatory states to make sure that the individuals within its territory are provided with the recognized rights without any form of discrimination or distinction. Further, Article 26 states that the states shall ensure equality before law to all the persons. It also mandates the signatory states to frame laws that prohibit, and protect against discrimination. Article 24 of ICCPR extends such protection against discrimination to children.

The General Assembly Resolution 2200A also gave The International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR also provided for human rights to all and advocated equality in its application. It mandated the signatory states under Article 2(2) to exercise the rights mentioned in the Covenant without any discrimination on the basis of race, colour, sex, language, religion, political or other opinion etc.⁷

The two Covenants, along with The Universal Declaration of Human Rights established non-discrimination and equal treatment as a fundamental aspect of human lives. Associating them with human rights and thereby stating that provision of these rights is non-negotiable on the

⁵ UNITED NATIONS, UNIVERSAL DECLARATION OF HUMAN RIGHTS 2 (1948), <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>.

⁶ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁷ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

part of state emphasized the necessity of non-discrimination as a whole. This also led to undertaking of several other international instruments that focused specifically on non-discrimination and vouched for equality of all across cultures, race and nationalities.

In 1965, The United Nations General Assembly through its Resolution No. 2106 passed The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). This was the first international instrument that addressed racial inequality and discrimination based on one's race.

The ICERD has defined racial discrimination “as any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁸

Article 1(b) of ICERD prohibited the signatory States from supporting racial discrimination.⁹ Article 1(d) mandated the states to legislate upon the prohibition of racial discrimination. Article 3 in condemned racial segregation and particularly apartheid.¹⁰ The Convention also listed various legal, political and civil rights that the States were obligated to provide without any discrimination to all the races. The convention is viewed as a significant milestone towards racial equality across the world. Further, the Convention also established a Committee on the Elimination of Racial Discrimination (CERD) which looks after the implementation of ICERD through its structure of independent experts.

In addition to the aforementioned instruments, several other conventions were developed in the coming years. These conventions, rather than dealing with equality and non-discrimination as a whole, targeted specific sections of population that were historically discriminated against. The Convention on the Elimination of All forms of Discrimination Against Women, 1979

⁸ H.O. AGARWAL, INTERNATIONAL LAW & HUMAN RIGHTS 868 (23rd ed. 2021).

⁹ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>.

¹⁰ Apartheid was a discriminatory policy of erstwhile South Africa whereby the black population of the country was devoid of civil & political rights and were subjected to socio-economic and political discrimination.

(CEDAW)¹¹ and the Convention on the Rights of the Child, 1989¹² are two prominent examples of population specific anti-discrimination international instruments.

These Conventions brought with it the wave of deliberation on inequality and discrimination prevalent in the world. These deliberations occurred at multilateral level that resulted in the nations coming together to undertake measures to eliminate discrimination of all kinds. International conferences, held under the aegis of United Nations were organized, to address specific inequalities such as racism and intolerance. One such significant development took place in 2001 in the city of Durban in The Republic of South Africa, which is known as The Durban Declaration.

3. DURBAN DECLARATION AND PROGRAMME OF ACTION

The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in the South African city of Durban from 31st August to 8th September 2001. The nine-day deliberation under the aegis of United Nations was focused on addressing increasing racial discrimination and other associated issues that resulted in discrimination. This meeting was known as the Durban Conference.

This was the third such multilateral discussion on racism. The previous two conferences on racism were held in 1978 and 1983 respectively, in Geneva. They resulted in very little impact as no real consensus could be built during these discussions. The discussions often shifted to apartheid regime of South Africa or the situation in Middle East regarding Zionism.¹³ This makes the World Conference held in Durban even more significant as it presented the world with a comprehensive program for combating racism, racial discrimination, xenophobia and related intolerance.¹⁴ This program was termed as The Durban Declaration and Programme of Action (DDPA).

¹¹ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

¹² UNICEF, CONVENTION ON THE RIGHTS OF THE CHILD (1989), <https://www.unicef.org/child-rights-convention>.

¹³ J. A. Lindgren Alves, *The Durban Conference against Racism and Everyone's Responsibilities*, 37 U.S.F. L. REV. 971 (2003).

¹⁴ UNITED NATIONS, CONFERENCES RACISM, <https://www.un.org/en/conferences/racism>.

The DDPA is the UN's blueprint to combat racism, racial discrimination, xenophobia and related intolerance globally.¹⁵ Despite not being a legally binding document, it holds a significant value as a symbol of the world collective to address racism and other forms of inequality spanned across the globe. The Declaration underscores the pledges of the States towards abolishing racism and other forms of discrimination. Similarly, the Programme of action gives a roadmap to the States, highlighting the steps that should be taken to tackle racism & associated discrimination, xenophobia and intolerance.

The Introduction to the DDPA addresses the historical injustices meted out to certain section of population in the world especially slave trade and slavery. Its is due to this reason that the language of the documents is 'historic'.¹⁶ It calls for the nations to draft respective action plans and strict laws to address discrimination and racism. The document further stresses in adopting a victim centric approach to address racism and discrimination.

3.1. Durban Declaration

The Declaration of the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance highlight the general issues in relation to racial inequality, its causes and presents the victim perspective of such inequality. It further states the various measures that can be taken to address the same in addition to the remedies & the strategies to eliminate racial inequality, xenophobia and related intolerance.

The declaration, in Para-4 expresses the solidarity of the nations with the people of the continent of Africa, which according to the Declaration, have perpetually struggled against intolerances associated with racial identity and also recognizes the losses meted out to them in this struggle. The declaration further states that the fight against racially originated intolerance is based on principles such as solidarity, respect, tolerance and multiculturalism.¹⁷ The declaration posits high regard to these values and considers them as the guiding light in the struggle against racism, racial discrimination, xenophobia and related intolerance.

¹⁵ UNITED NATIONS, DURBAN DECLARATION AND PROGRAMME OF ACTION (2001), <https://www.un.org/en/fight-racism/background/durban-declaration-and-programme-of-action>.

¹⁶ UNITED NATIONS, WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE DURBAN DECLARATION AND PROGRAMME OF ACTION (2001), https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf.

¹⁷ *Id.* at 14.

Para 7 declares equality of all human beings and stresses that any dogma that establishes the superiority of one race over the other is false and immoral. The declaration covers the ambit of religious freedom and associated tolerance while simultaneously establishing the role of religion to eradicate social inequality and racial discrimination. The declaration also highlights the impact of globalization on developing countries. It establishes a correlation of globalization in developing nations and social inequalities such as marginalization & social exclusion.

Further, para 12 of the Declaration stresses that racism, racial discrimination, xenophobia and related intolerance should not be the determining factors of migration of people. Meaning that people should not be forced to make a decision to move out of a place because they faced any or all forms of racial inequality & intolerance.

The declaration acknowledges slavery, colonialism, apartheid and xenophobia against non-nationals as the main sources of racism and associated discrimination. It also establishes the interrelationship between these inequalities and socio-economic factors such as poverty, underdevelopment, marginalization and economic disparities. The declaration in Para 25 disclaims racism, racial discrimination and related intolerance that persist in some nations and are existent within their legal systems.¹⁸

It also highlights the plights of the victims of racial discrimination around the world. It particularly focuses on people of Africa and African descent who have historically been subjected to aggravated form of racial abuse. In para 33 of the declaration, it urges the nations, especially those in the Americas to acknowledge the cultural, economic, political and scientific contributions made by the people of African descent and also the racism, racial discrimination, xenophobia and related intolerance. It further addresses the issues of indigenous population regarding racism and stresses on establishing and maintaining their dignity in light of their cultural diversity.

The declaration condemns racism, racial discrimination, xenophobia to migrants and related intolerance and the associated stereotypes applied to them. It affirms the rights of the sovereign states to form their domestic laws and policies on migration, but states that such laws and policies must be in consonance with human rights and must not go against the fundamental areas of concern highlighted under the declaration.

¹⁸ *Supra* note 17.

It also addresses racism and racial discrimination against certain specific group of population. While calling for religious tolerance, it calls for an end to racism based on religion for e.g. Zionism, which in 1975, was declared by United Nations General Assembly as a type of racism.¹⁹ It also stated that apart from people belonging to certain religions, women and children, especially those belonging to ethnic, linguistic or religious minority were subject to racial discrimination. In para 75, the declaration also addresses racism, racial discrimination, xenophobia and related intolerance against people infected or affected by HIV/AIDS, which according to the text “impacts and impedes their access to healthcare and medication.”²⁰

The Durban Declaration, is thus a joint statement against racism, racial discrimination, xenophobia and related intolerance. Along with addressing the sources of such actions and highlighting the quandary of its victims, the declaration calls for measures to prevent them. It specifically highlights the role of education in this regard. Education in this declaration is synonymous with awareness in relation to these actions. Awareness regarding human rights norms can be spread through enactment of laws and social, political and economic policies.²¹ In this regard, the declaration also stresses on the importance of political parties and political leaders.

Further, the declaration provides for measures through which racism and associated discrimination can be addressed. It highlights the role of media, modes of information technology and the States to combat racism, racial discrimination, xenophobia and related intolerance while also focusing on rights of victims such as right to speech and expression and right to education. The declaration thus, showcases the coming together of the world community in its endeavour to achieve full and effective equality through international cooperation and the use of the United Nations mechanism.

3.2. Programme of Action

The Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance is a blueprint that highlights the various measures through which racism and associated forms of racial discrimination can be addressed. It is on the lines of suggestive policies that the states must adhere to in order to address racism and allied

¹⁹ UNGA Resolution 3379 of 1975.

²⁰ *Supra* note 17.

²¹ *Id.* at 33.

discrimination. It is a policy document that urges the States to take action on the following measures to combat racism and intolerance:

- It urges the states to establish mechanism whereby the perpetrators of racist acts are prosecuted so that such acts may be prevented.
- Establishing of independent human rights institutions, specifically related to racism by the States.
- Improvement on concept and methods of data collection and analysis for researching on racism, racial discrimination, xenophobia and related intolerance. The programme also invites inter-governmental organisations, NGOs, academic institutions and the private sector for the same.
- States to regularly monitor acts of racism and related discrimination.
- Conducting studies on how racism, racial discrimination, xenophobia and related intolerance may be reflected in laws, policies, institutions and practices.²²
- The programme urges the States to have respective National Action Plans that promote values such as diversity, equality and social justice.
- States to promote access to healthcare such as related to childhood immunizations, HIV/AIDS, heart diseases, cancer and contagious diseases.
- The programme also urges the States to ensure that no racism or allied discrimination is done in the place of employment.
- States, under Para 111 of the programme of action have been invited under the declaration to consider non-discriminatory measures to provide safe and healthy environment for individuals.
- The programme of action also deals with measures ensuring equal participation of all in decision making especially related to political, social, economic and socio-cultural

²² *Supra* note 17 at 37.

aspects of governance.

- It also stresses on the role of education to the victims of racism and also in spreading awareness regarding the ills of racism and thereby increasing the awareness level regarding the same. The programme specifies education in respect to Human rights to all including public officials, in this regard.
- The programme further stresses on international collaboration and initiatives to address racism, racial discrimination, xenophobia and related intolerance. It urges international institutions such as the World Health Organisation (WHO), International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO) to address and look into the issues of the victims of racism and related racial discrimination.
- The programme also highlights the need and development of remedies and redressal of the issues regarding racism and related discrimination. It urges states to acknowledge the historical facets of the injustices meted out to certain group of people and thereby to develop programmes so as to uplift the social and economic status of such diaspora within their national jurisdiction.
- Further, the programme urges the states to ensure that legal assistance is provided to the victims of racism, racial discrimination, xenophobia and related intolerance.
- The programme also urges the establishment of national and international frameworks to address racism and associated intolerance and discrimination.

Thus, the Durban Declaration and the Programme of Action collectively establishes the need for action against racism and associated forms of discrimination. It further sets up the strategies and the directive principles through which this can be achieved. The programme of action is advisory in nature, characterised by suggestions to the States and international community alike, to make the world tolerant and inclusive to all.

3.3. Developments after the Durban Declaration and Programme of Action, 2001

The maiden collective statement against racism in the form of DDPA was a momentous step and it ushered hopes for a consolidated efforts in tackling race-based discrimination and

inequalities. The programme of action, it was believed, would act as a guiding light in international and national policy making against racism. However, there was no concrete initiation in this regard. Since the DDPA was suggestive in nature with no mandatory provisions, States did not consider it necessary to establish a dedicated framework regarding the same.

A follow up conference was held in Geneva from 20 to 24 April 2009 to evaluate the progress towards the goals set up under the DDPA, called the Durban Review Conference.²³ The conference was marred with controversies with boycotts from Canada, USA, Italy, Germany, Australia, New Zealand etc. The comments made by the then Iranian President against Israel also saw sharp criticism by the then United Nations Secretary General Ban-Ki-Moon²⁴ and nations such as Norway.²⁵ The Review Conference was thus overshadowed by international politics. The Conference gave an outcome document consisting of 143 points on the various ways to combat racism.²⁶

Subsequent follow ups to the DDPA were made in 2011 and 2021 on the tenth and the twentieth anniversary of the original conference, respectively. The conferences took place in New York and akin to their predecessors were characterized by boycotts from many States over different issues. The fourth conference held in 2021 is significant as it addressed racism from a reparatory point of view. It cited the injustices meted out to certain set of population due to colonialism and established the responsibility of the colonial States to repatriate the colonized States for the racial injustices.

4. CRITICAL ANALYSIS OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION

The DDPA was framed with the hope of having a consensus against racism and xenophobia around the world. However, the conference has been subject to several issues sourced in international politics. While these issues have led to the DDPA being a mere advisory statement, there are other factors that have led to the document and the sentiment behind the

²³ UNITED NATIONS, DURBAN REVIEW CONFERENCE (2009), <https://www.un.org/en/durbanreview2009/>.

²⁴ *Walkout at Iran leader's speech*, BBC (April 20, 2009) <http://news.bbc.co.uk/2/hi/europe/8008572.stm>.

²⁵ Norway Ministry of Foreign Affairs, Norwegian statement at Durban Review Conference (April 20, 2009), https://www.regjeringen.no/en/historical-archive/Stoltenbergs-2nd-Government/Ministry-of-Foreign-Affairs/taler-og-artikler/2009/durban_id555874/.

²⁶ UNITED NATIONS, OUTCOME STATEMENT OF THE DURBAN REVIEW CONFERENCE (2009), https://www.un.org/en/durbanreview2009/pdf/Durban_Review_outcome_document_En.pdf.

same to become nullified. These issues stretch beyond the international politicking, transversing to certain fundamental faults in the declaration and the programme of action.

Non-binding Character of the Declaration and the Programme of Action

The biggest deficiency of the DDPA lies in its non-binding character. It is a declaration with non-imperative character, reducing its contents to mere suggestions rather than being a directive. This makes the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance and its follow ups mere consultations where the States are left at their discretion to follow the contents. The programme of action does provide a framework for tackling racism and allied forms of discrimination, but in void of a binding mandate, it reduces to non-justiciable aspects of international human rights law.

Lack of Monitoring

There is no monitoring mechanism to oversee the performance under the Durban Declaration & Programme of Action. Review Conferences do take place after every decade, but its work is limited to issuing of a joint statement and further pronouncement of principles without considering the performance of the States in relation to the programme of action. The DDPA is reduced to mere statement devoid of persuasive value.

Dependent on States for Implementation

Linked with the issue of lack of monitoring of the progress and actions of the declaration and the programme is the issue of implementation. The DDPA relies heavily on the goodwill of the States to act upon the declaration and implement the programme of action. However, with no monitoring mechanism and non-obligatory nature of the text, States seldom bother to pursue the implementation of the same. Thus, the declaration is made subject to the subjective willingness of the countries.

Non-Involvement of the United Nations

The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance was held under the aegis of the United Nations. However, the UN has maintained its distance from the same in relation to its implementation. The UN does provide the forum for review meetings but its role is restricted to it. Its agencies such as the Security Council have also been

inactive on the declaration and programme of action. One reason of the same is the North South divide on the DDPA which has manifested in its follow up sessions in 2009, 2011 and 2021.

North-South Divide

The follow up to the DDPA 2001 has showed the stark difference between the global north and south. The global north consisting of rich and industrialized countries such as USA, Canada, UK, France, Australia have raised objections to the letter and (sometimes) the spirit of the declaration. The global south has their own grievances from the declaration, stating that it is reduced to a mere statement in absence of an enforcement mechanism. The global south is also aggrieved from the fact that there are no concrete measures that set up the accountability of the global north against the racism and racial discrimination inflicted by them on their colonies, which later became the global south.

Lack of Clarity on Reparations

The recent follow up to Durban Declaration held in 2021 stated that the nations that have faced racism and associated discrimination historically deserve their share of compensation. These reparations are seen as a means of extending an apology to the people of these nations, particularly African countries. However, neither the declaration, nor the programme of action, & the statement released in 2021 follow up, elucidates upon the methodology of calculating these reparations. Also, the text is silent on the mode of attributing the reparations on the inflicting nations and also the mode of distributing the reparations amongst the aggrieved nations.

Tries to Address Multiple Issues

The DDPA tries to check all the boxes related to discrimination in general and racial discrimination in particular. Its attempt to shoot multiple birds with one stone is one of its underwhelming aspects. With non exhaustive ambit of issues, it fails to create a pressure or support in favour of all the issue. Contrasting same with the multilateral approach to environment conservation, the conferences and declarations often target one specific issue of environmental impairment such as threat to Ozone layer, Transboundary Movement of Hazardous Waste, sustainable development etc. This allows the international community to create a consensus on the environmental issues and thus the solutions to the same are reached

in an efficient manner. The DDPA in its venture to tackle all the aspects of discrimination tries to reach on a consensus on multiple issues at once, which though achieved in theory in 2001, has failed to achieve in practice.

Failed to Tackle Race Associated Violence

Several nations have reported race-based violence in the recent past. Nations located in both Global North as well as Global South have witnessed race-based violence that have turned into violent clashes and in many cases, affecting the law & order situation of the country. The murder of George Floyd in USA in 2020 acted as a catalyst for a debate on racial violence in America and also led to a series of law & order issues in the country.²⁷ Further, with growing influx of immigrants due to global turmoil, the issues related to racism and xenophobia have increased manifold in the host nations. This has led to a call for removing immigrants even if they have been legally staying in the nation. The ICE raids in the US in past few months is testament to the same.²⁸ In this light, it would not be wrong to state that DDPA has failed its purpose of establishing an anti-discriminatory world.

Understates Racism against Asian Population

The Durban Declaration was assented to just a few days before the 9/11 terror attacks. The tragedy sowed the seeds of general trust deficit and a rise of racism and racial profiling against Asians, especially belonging to Middle East and South Asia. Even today, the middle eastern and south Asian diaspora is seen with general contempt and is subjected to racism. Incidents of violence related to adorning of religious symbols such as wearing of a turban has often been reported from the western nations.²⁹ The issue extends beyond racism, extending to xenophobia. Further, the racial discrimination against Asians, specifically against people

²⁷ Jason Silverstein, *The global impact of George Floyd: How Black Lives Matter protests shaped movements around the world*, CBS NEWS (June 4, 2021) <https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact/>.

²⁸ ICE stands for the United States Immigration and Customs Enforcement. The ICE raids refer to a series of raids whereby the members of ICE are arresting the immigrants, who according to the US Department of Homeland Securities, have been staying illegally in USA. These raids have gained a notorious reputation as it has been accused of racial profiling in conducting arrests and allegedly arresting even those who are legally staying in the country for a long time.

²⁹ Neha Singh Gohil & Dawinder S. Sidhu, *The Sikh Turban: Post-911 Challenges To This Article Of Faith*, 9 *Rutgers Journal of Law and Religion*, (2008).

belonging to East and South East Asian countries has been recorded in post-COVID era.³⁰

This issue not only highlight the failure of DDPA in its implantation, it also shows the fundamental issues regarding the Durban Declaration. The Declaration specifically called out racism, in its historical and contemporary context, against people of African descent. It somehow ignored racism against other regions of Global South, and clubbed their issues pertaining to racism, racial discrimination, xenophobia and related intolerance with the rest of the world, diluting their intensity.

5. CONCLUSION AND SUGGESTIONS

After almost quarter of a century of The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, it is a reasonable expectation that the world would be a better place where racism and allied discrimination would have been reduced, if not completely eliminated. However, the reality is at a stark contrast to these potentials.

Today, the world seems to be more fragmented, at least to a few, than it was twenty-five years ago. The DDPA adopted in the World Conference has not led to significant results and the entire exercise has been blotted with international politics and consequent inaction. Therefore, to make this initiative a success, the following suggestions can be considered:

- A consensus-oriented approach should be strived for by the international fora. In this, the role of organs such as UN General Assembly and regional blocs such as African Union, BRICS, NATO et.al. should be measured. These blocs can prove instrumental to gain a consensual approach to racism, racial discrimination, xenophobia and related intolerance and reduce the North South divide.
- The International Court of Justice (ICJ) can prove instrumental in supplementing the programme of action. It can act as an adjudicating and advisory forum where issues related to racism, racial discrimination and xenophobia can be elucidated in historical and legal contexts.

³⁰ Mitchell Alan Kaplan, *The Rise in Anti-Asian Racism and Xenophobia in the Time of COVID-19*, 18 J. HATE STUD. 96 (2023).

- The Committee on the Elimination of Racial Discrimination (CERD) under the Convention on the Elimination of All Forms of Racial Discrimination can act as a research and development services to the DDPA. It can also supplement as an advisory body on matters related to racism and racial discrimination to the conference.
- Regular monitoring of the developments made under the DDPA should be conducted at State specific level. For this, the assistance of UNHRC, CERD and other international bodies can be sought.
- Reparations sought for the nations whose nationals have been historically subjected to racism and associated discrimination must be clarified in terms of the mode of their collection and disbursement. Further, such reparations must be made obligatory and not discretionary upon the States for which international persuasion must be vouched.
- Finally, the DDPA is heavily centralized on racial injustices meted out to the African community. It must encompass racism and associated discrimination along with xenophobia against other nationals as well.

Therefore, it can be concluded that while the Durban Declaration and the Programme of Action was a significant step in respect to address discrimination across the globe. It came under the aegis of the United Nations system and thereby held significant value in relation to its content and application. It was a momentous step as, for the first time, a consensus was reached upon by the international community in respect to racism and racial discrimination along with xenophobia.

However, the consensus did not translate to effective application of the text of the declaration. Surrounded by international politics and some inherent flaws within the document, the declaration has been reduced to a mere meeting with no significant value. The lack of application stems from multiple factors which need to be addressed, at least in some capacity, before the next prospective review conference to ensure that the ultimate objective with which the declaration was approved by the international community is achieved and the world becomes a more inclusive and tolerant space for all.