## CHAPTER II

THE ORIGIN AND DEVELOPMENT OF HUMAN RIGHTS IN THE GLOBAL SCENARIO

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2.1 Introduction

The term "Human Rights" is comparatively of recent origin. But the idea of human rights is as old as the history of human civilization. Human rights are deeply rooted in the historical past. The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain. Justice V.R. Krishna lyer in his book, *Human Rights and Inhuman Wrongs* remarks that, "ultimately humanity has a commitment to history to make human rights a viable reality."

2.2 Historical Foundations of Human Rights

The roots for the protection of the rights of man can be traced as far back as to the Babylonian laws. The Babylonian King 'Hammurabi' issued a set of laws to his people called 'Hammurabi's Codes.' It established fair wages, offered protection of property and required charges to be proved at trial. The Assyrian Laws, the Hittiti laws and the Dharma of the Vedic period in India also devised different sets of standards by which rights of one was respected by another. All the major religions of the world have a humanist perspective that supports human rights despite the differences in their content.

Human rights are also rooted in ancient thought and in the philosophical concepts of 'Natural Law' and 'Natural Rights.' A few Greek and Roman philosophers recognised the idea of Natural Rights. Plato (427-348 BC) was one of the earliest thinkers to advocate a universal standard of ethical conduct. According to the Roman jurist Ulpain, natural law was that "which nature and the State assures to all human beings." This meant that foreigners must be treated in the same way as one deals with one's compatriots. It also implied conducting of wars in a civilized manner.
The Republic (400 BC) proposed the idea of universal truths that should be recognised by all. Aristotle (384-322 B.C) wrote in Politics that justice, virtue and rights change in accordance with different kinds of institutions and circumstances. Cicero (106-43 B.C), a Roman statesman, laid down the foundations of "natural law" and "human rights" in his work, The Laws (52 B.C). Cicero believed that there should be universal human rights laws that transcend customary and civil laws. Sophocles (495-406 B.C) was one of the first to promote the idea of freedom of expression of opinion against the State. Stoics employed the ethical concept of natural law to refer to a higher order of law which corresponded to nature and which was to serve as a standard for the laws of civil society and Government. Later, Christianity, especially the writings of St.Thomas Aquinas (1225-1274), based this 'natural law' in a divine law, which was revealed to man in part discoverable by him through his God – given right of reason. The City States of Greece gave freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and right to access to justice to their citizens. Similar rights were secured by the Romans by the "Jus Civile" of the Roman law. Thus, the origin of the concept of human rights can be found in the Greco-Roman natural law doctrines of "Stoicism" (the school of philosophy founded by Zeno and Citium), which held that a universal force pervades all creation and that human conduct should, therefore, be judged according to the laws of nature.

'The Magna Carta,' also called Magna Charta in Latin, consisted of 70 clauses. Though not a complete catalogue of civil rights and liberties as we know of today, it could, nonetheless, be described as the starting point of Constitutional history which shifted the focus from the power of the
State to human rights since it has enshrined the principles of liberty, justice and even of equality and fraternity.\textsuperscript{5} It is a great tribute to the people of the United Kingdom to have preserved it, to nurse it and to nurture it over the years to serve as a beacon to humankind. Though the bundle of civil rights and liberties under ‘the Magna Carta’ was limited, its impact was revolutionary as it ushered in the realisation and recognition that individuals had certain rights and could claim these rights against the State and that the State was expected to respect and not to interfere with such rights and liberties of the individuals.

‘The Magna Carta’ granted by King John of England to the English barons on June 15, 1215 was in response to the stiff opposition to the heavy burden of taxation created by the third Crusade and the ransom of Richard I, captured by the Holy Emperor Henry VI. The English barons protested against the heavy taxes and were unwilling to let King John rule again without granting some concessions regarding their rights. The overreaching theme of “Magna Charta” was the protection against arbitrary acts by the King. Accordingly land and property could no longer be seized, judges had to know and respect laws and taxes could not be imposed without common counsel. There could be no punishment without a trial. The merchants were granted the right to travel freely within England and outside. The Magna Carta also introduced the concept of jury trial in its Clause 39, which provided protection against arbitrary arrest and imprisonment. Thus the Charta set-forth the principle that the power of the King was not absolute. In 1216-17 during the reign of John’s son, Henry III, The Magna Carta was confirmed by Parliament and in 1297 Edward I confirmed it in a modified form. The Carta was reinforced in 1628
by the Petition of Rights and in 1689 by the Bill of Rights and thus formed the platform for Parliamentary superiority over the Crown and gave a documentary authority for the 'Rule of Law' in England. In addition to the above, the writings of St. Thomas Aquinas and Grotius also reflected the view that human beings are endowed with certain eternal and inalienable rights.

The concept 'fundamental rights of man' is found in the declarations and Constitutional instruments of many States. For instance, the 'Declaration of Independence' of the thirteen States of America in 1776 (The Virgina Declaration, 1776) and the Constitution of the United States of America, 1787, with amendments in 1789, 1865, 1869 and 1919 specified a number of rights. The Virginia Declaration of Rights affirmed that all men are by nature equally free and independent with certain inherent rights. The French Declaration of the Rights of Man and of Citizen of 1789 led other European States to include provisions in their laws for the protection of human rights. Sweden in 1809, Spain in 1812, Norway in 1814, Belgium in 1831, Denmark in 1849, Prussia in 1850 and Switzerland in 1874 made provisions for the fundamental rights of man.

The term "Natural Rights" eventually fell into disfavour, but the concept of "Universal Rights" took root. The phrase "The rights of man" was found unsuitable, as it was not universally understood to include the rights of women. It was Eleanor Roosevelt who suggested in 1947 that the term 'Rights of Man' be changed to 'Human Rights'.

Though the term 'human right' was first coined by Thomas Paine and used in his English translation of the French Declaration of the Rights
of Man and Citizen (1789). Henry David Thoreau in his classical treatise - Civil Disobedience, expanded this concept.

Till the nineteenth and the beginning of the twentieth century, any attempt to enforce human rights was considered as an attack upon the concept of State sovereignty. However, there were exceptions to the above rule like the adoption of the Slavery Convention of 1926 and the establishment of the International Labour Organisation in 1919. The Covenant of the League of Nations adopted at the end of World War I was silent on the issue of human rights.

The realization of the worth of human being led the Institute of International Law to issue a Proclamation of the Rights of Man in 1929. Instead of enumerating the rights of human beings, it laid down six duties of the State. The Proclamation of 1929 recognised the right of every individual to life, liberty and prosperity; the rights without any distinction as to nationality, sex, race, language; the right of every individual to the free practice in public or in private of any faith, religion or belief. The proclamation may be regarded as the first attempt towards the universalisation of human rights.

The turning point for the traditional approach came in the 1940s, in the midst of the extreme abuses of human rights in war-torn Europe during World War II. Atrocious crimes were being committed against humanity and there was a total suppression of fundamental human rights. The Nazi leaders of Germany had established a regime of complete lawlessness and tyranny. They had barbarously negated all human values and dignity within the territories under their occupation. It was at this time that the restoration of the freedom and rights of the people was accepted as one of
the essential conditions for the establishment of international peace and security. The spirit of this principle was well reflected in the Proclamation issued by the American President Franklin D. Roosevelt on January 6, 1941, which came to be known as 'Four Freedoms.' In his message Roosevelt declared, "Freedom means the supremacy of human rights everywhere."

In the Moscow Declaration of German Atrocities of October 30, 1943, the United States, the United Kingdom, France and the Soviet Union declared that the Germans should be held responsible individually for their violations of international law. A number of conferences and meetings were held before the formation of the United Nations as an international organisation in 1945 (United Nations Declaration, 1942; Moscow Declaration, 1943; Tehran Declaration, 1943; Dumbarton Oaks Conference, 1944 and San Francisco Conference, 1945). A joint declaration was issued by President Franklin D. Roosevelt of the United States and Prime Minister Winston Churchill of the United Kingdom on August 14, 1941 in a document known as the 'Atlantic Charter.' The declaration of the United Nations signed on January 1, 1942 in Washington was the first document, which used the term human rights. In this document the signatories who were fighting against the Axis Powers recognized the need to "preserve human rights and justice in their own land as well as in other lands."

2.3 Human Rights under the U.N. Charter

The Charter of the United Nations represents a significant advancement in the direction of faith in and respect for human rights. The appalling atrocities perpetrated by the Nazis against the Jews and other races during World War II led to a strong movement towards international
protection of fundamental human rights.⁹ The delegates from some of the States at the San Francisco Conference were in favour of the adoption of an even stronger provision concerning human rights. An attempt, which proved abortive, was also made to incorporate in the U.N. Charter an International Bill on Human Rights. Concern for human rights is woven into the U.N. Charter like a golden thread. Human rights have occupied a significant chapter in any story of the U.N.¹⁰ The Charter contains a number of provisions for the promotion of human rights and fundamental freedoms in the Preamble and in Articles 1, 13(b), 55, 56, 62(2), 68 and 76(c), which are as follows:

a) The first paragraph of the Preamble of the Charter lays down that "we the people of the United Nations are determined to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large or small . . . ."

b) Paragraph 3 of Article I of the Charter lays down that the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the U.N.

c) By the terms of Article 13, the General Assembly is empowered to initiate studies and make recommendations for the purpose of assisting the realization of human rights and fundamental freedoms without distinction as to race, sex, language or religion.
d) Article 55 empowers the U.N. to promote universal respect for, and observance of human rights and fundamental freedoms for all without any distinction as to sex, race, language or religion.

e) Article 56 provides that the members of the United Nations shall pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.

f) Article 62 of the Charter of the U.N. empowers the Economic and Social Council to make recommendations for the purpose of promoting respect for and observance of the human rights and fundamental freedoms of all.

g) As per Article 68 it shall be the responsibility of the Economic and Social Council to set up Commissions in economic and social fields for the promotion of human rights. The Commission on Human Rights and the Commission on the Status of Women are the subsidiary bodies of the Economic and Social Council.

h) Paragraph (c) of Article 76 stipulates that one of the basic objectives of the 'Trusteeship System' is to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The U.N. Charter did not contain a specific Charter on human rights and so an attempt was made to fill them out by drawing up the "Universal Declaration of Human Rights and Fundamental Freedoms" in 1948 and with a view to implement the Universal Declaration, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African
Charter on Human and People's Rights, and the American Convention on Human Rights, and finally the International Covenants on Human Rights were adopted.

2.4 Universal Declaration of Human Rights and the Commission on Human Rights

The idea for the protection of human right and fundamental freedoms was conceived in the 'Atlantic Charter' in 1941 and the "Declaration of the United Nations" in 1942. The first documentary use of the expression "Human Rights" is to be found in the Charter of the United Nations adopted at San Francisco on 25th June 1945. The preamble of the Charter, setting up an international organisation called the United Nations, declares that the U.N. shall have in its objects, *inter alia*, a firm faith in fundamental human rights.

When the founders of the United Nations met at the San Francisco Conference in 1945 to draft the Charter of the U.N; the Latin American States wanted the Conference to discuss an International Bill of Human Rights. Panama wanted it to be incorporated as a part of the Charter. But the super powers were not interested in precise legal obligations and international action on human rights. As a result, the Charter contained a number of provisions, which are vague and are of a general nature for the promotion and protection of human rights and fundamental freedoms.

To implement the provisions of the U.N. Charter concerning human rights, the General Assembly of the United Nations decided to prepare an International Bill on Human Rights. With a view to achieve this, the General Assembly of the United Nations requested the Economic and Social Council on January 29, 1946 to get a report on the study conducted
by the Commission on Human Rights. The Commission as determined by its terms of reference prepared recommendations and reports on the following items.

1. International Bill of Rights
2. International declarations and conventions on civil liberties, the status of women etc.
3. The prevention of discrimination on grounds of race, sex, language or religion
4. The protection of minorities
5. Other matters concerning human rights

The Commission began work in January 1947, under the Chairmanship of Mrs. Franklin D. Roosevelt. In its first session, the Commission on Human Rights established a sub-committee for the Prevention of Discrimination and Protection of Minorities. The Commission in the same session appointed a committee known as Drafting Committee for the preparation of the draft of an International Bill of Rights. It drafted the Universal Declaration of Human Rights, which was adopted by the General Assembly on 10th December 1948. Using the Declaration as basis, the Commission prepared an International Covenant on Civil and Political Rights and an International Covenant on Economic and Social and Cultural Rights in 1966.

The Universal Declaration of Human Rights was adopted in 1948 and the two International Covenants were adopted in 1966 codifying the two sets of rights outlined in the Universal Declaration. International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights came into force in 1976. Later the
General Assembly also adopted two Optional Protocols on Civil and Political Rights. The Optional Protocol to the International Covenant on Civil and Political Rights, 1966 came into force on March 23, 1976 and the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of Death Penalty in 1989 came into force on July 11, 1991. The two International Covenants, together with the Universal Declaration of Human Rights and the Optional Protocols, comprise the 'International Bill of Human Rights'. Thus the International Bill of Human Rights is a collective term applied to five major international instruments.\textsuperscript{14}

The Preamble of the Universal Declaration incorporated a form of language in tune with the spirit of natural law by inserting, 'whereas recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' Keeping this declaration always in mind, it shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The Universal Declaration dealt not only with civil and political rights, but also with social and economic rights.

2.4.1 Civil and Political Rights in the Universal Declaration

Articles 2 to 21 deal with those civil and political rights, which have been generally recognised throughout the world. These are as follows:

1. Right to life, liberty and security of persons (Article 3)
2. Freedom from slavery or servitude (Article 4)
3. Prohibition against torture, inhuman or degrading treatment or punishment (Article 5)
4. Recognition as a person before the law (Article 6)
5. Equality before the law and equal protection of the law without any discrimination (Article 7)
6. Effective remedy before the national tribunals (Article 8)
7. Freedom from arbitrary arrest, detention or exile (Article 9)
8. Right to a fair and public hearing by an independent and impartial tribunal (Article 10)
9. Presumption of innocence until proved guilty in a public trial with all guarantees necessary for defence in criminal cases (Article 11)
10. Freedom from ex-post facto laws (Article 11)
11. Right to privacy, family, home and correspondence (Article 12)
12. Right to freedom of movement and residence within the borders of a State (Article 13)
13. Right to leave any country, including his own and to return to his country (Article 13)
14. Right to seek and to enjoy in other countries asylum from persecution (Article 14)
15. Right to a nationality (Article 15)
16. Right to marry and to found a family (Article 16)
17. Right to own property (Article 17)
18. Right to freedom of thought, conscience and religion (Article 18)
19. Right to freedom of opinion and expression (Article 19)
20. Right to freedom of peaceful assembly and association (Article 20)
21. Right to participate in the Government of his country (Article 21)

2.4.2 Economic and Social Rights in the Universal Declaration

Articles 22 to 27 of the Declaration guarantee the following economic and social rights:

1. Right to social security (Article 22)
2. Right to work and free choice of employment (Article 23)
3. Right to rest and leisure (Article 24)
4. Right to a standard of living adequate for the health of himself and of his family (Article 25)
5. Right to education (Article 26)
6. Right to participate in cultural life (Article 27)
7. Right to good social and international order (Article 28)

The Declaration laid down under Article 29 contains certain limitations to these rights and freedoms, by providing that everyone has duties to the community in which alone the final and full development of his personality is possible. Paragraph 2 of Article 29 provides that these rights shall be provided to the individuals subject to just requirements of morality, public order and the general welfare in a democratic society. This condition made the rights provided in the Declaration not absolute.

2.5 Adoption of the Two International Covenants

The General Assembly on 16th December 1966 adopted the two Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It also adopted an Optional Protocol to the International Covenant on Civil and
Political Rights. The General Assembly on 15th December 1989 adopted the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.16

2.5.1 The Covenant on Civil and Political Rights

The Covenant on Civil and Political Rights that consists of 53 Articles is divided into six parts. Article 1 which refers to the right of peoples to self-determination states that all people have the right to determine freely their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resource without prejudice to any obligations arising out of international economic co-operation, based upon the principles of mutual benefit and international law. The Article, further states that in no case may a person be deprived of his own means of subsistence, and that the 'States Parties' shall promote the realization of the right of self-determination and shall respect that right. The Covenant on Economic, Social and Cultural Rights also stipulated the above provisions in toto under Article 1.

Part II stipulated the rights and obligations of the 'States Parties' to the Covenant. It included the obligations of the States to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the Covenant. The States Parties ensure equal right of men and women to the enjoyment of all civil and political rights.
2.5.2 Substantive Rights

Part III deals with the specific rights of the individuals and the obligations of the States Parties.

1. The right to life (Article 6)
2. Freedom from inhuman or degrading treatment (Article 7)
3. Freedom from slavery, servitude and forced labour (Article 8)
4. Right to liberty and security (Article 9)
5. Right of a detainee to be treated with humanity (Article 10)
6. Freedom from imprisonment for inability to fulfil a contractual obligation (Article 11)
7. Freedom of movement and the right to choose one’s residence (Article 12)
8. Freedom of aliens from arbitrary expulsion (Article 13)
9. Right to a fair trial (Article 14)
10. Non-retroactive application of criminal law (Article 15)
11. Right to recognition as a person before the law (Article 16)
12. Right to privacy, family, home or correspondence (Article 17)
13. Freedom of thought, conscience and religion (Article 18)
14. Freedom of opinion and expression (Article 19)
15. Prohibition of propaganda of war (Article 20)
16. Right to peaceful assembly (Article 21)
17. Freedom of association (Article 22)
18. Right to marry and found a family (Article 23)
19. Rights of the child (Article 24)
20. Right to take part in the conduct of public affair, to vote and to be elected (Article 25)
21. Equality before the law (Article 26)
22. Rights of minorities (Article 27)
The above rights set forth in the Covenant are not absolute and are subject to certain limitations. While the formulation of the limitations differed in so far as details are concerned from Article to Article, it could be said that by and large the Covenant provided that rights should not be subjected to any restrictions except those which were provided by law, and were necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

2.5.3 Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights consists of 31 Articles divided into five parts. Part I deals with rights of peoples to self-determination as provided in Article I of the Covenant on Civil and Political Rights. Other rights of the individuals are enumerated in Part III of the Covenant which include the following:

1. Right to work (Article 6)
2. Right to just and favourable conditions of work (Article 7)
3. Right to form and join trade unions (Article 8)
4. Right to social security (Article 9)
5. Right relating to motherhood and childhood, marriage and the family (Article 10)
6. Right to adequate food, clothing, housing and standard of living and freedom from hunger (Article 11)
7. Right to physical and mental health (Article 12)
8. Right to education including a plan for implementing compulsory primary education (Article 13)
9. Right relating to science and culture
2.5.4 Optional Protocol to the Covenant on Civil and Political Rights: 16 December, 1966

The International Covenant on Civil and Political Rights and the Optional Protocol are separate instruments. But they are related to each other inasmuch as only the State Parties to the Covenant can become parties to the Protocol. Both the Covenant and Protocol that came into force simultaneously on 23, March 1976 provide the individuals the right to make petitions before the Human Rights Committee. The Protocol provides a right to the State Parties to denounce it at any time by sending a notification to the Secretary General of the United Nations. Articles 1, 2 and 3 refer to the sources, subject matter and admissibility of communications. The Human Rights Committee is competent to receive communications from individuals.

2.5.5 Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of Death Penalty

On 25th November 1981, the General Assembly decided to consider the idea of elaborating a draft of a second Optional Protocol to the International Covenant on Civil and Political Rights. With the efforts of the General Assembly and the Commission on Human Rights, a second Optional Protocol to the International Covenant on Civil and Political Rights was concluded in 1987 by which the State Parties to the Covenant, if they so desired, could take on the additional obligation of abolishing the death penalty. Death penalty involves an inevitable element of suffering and humiliation. It is a violation of human rights – the right to life and the right not to be subjected to cruel, inhuman, or degrading treatment. Further, the execution of death sentence is again an act of torture. The Protocol came into force on 11th July 1991. By 2nd November 2003 the Protocol had as
many as 50 State Parties. Article 6 of the Covenant on Civil and Political Rights had referred to the desirability of the abolition of death penalty, as it is one of the measures for the enjoyment of the right to life. In order to abolish death penalty at the international level, the second Optional Protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly on 15th December 1989.\textsuperscript{18}

2.5.6 \textbf{Draft Optional Protocol to the Covenant on Economic, Social and Cultural Rights}

The Economic and Social Council by a resolution 17/1985 established a committee on Economic, Social and Cultural Rights in 1985. The committee since 1990 has devoted attention to the possibility of elaborating such an Optional Protocol and has discussed the issue at length on several occasions. At its sixth session in 1991, the committee supported the drafting of an Optional Protocol in order to ensure the practical implementation of the Covenant. The Vienna Conference on Human Rights gave added impetus to this initiative by asserting the declaration and programme of action that the Committee should follow. The Committee prepared a draft Optional Protocol in 1996 at its 15th session, but it has not been officially adopted by the General Assembly.

2.6 \textbf{International Judicial System (International Criminal Court)}

The International Court of Justice has jurisdiction to the extent of deciding the cases of States only. Article 34(1) of the statute of the International Court stipulates that only States may be parties in cases before the Court. It means individuals have no access to the court. Neither the statute nor the rule of the court permits individuals to file a petition before the court unless the State sponsors it.

The Statute of the International Criminal Court, which came into force on July 1, 2002 and inaugurated on March 11, 2003 is likely to serve
the useful purpose of curbing serious human rights violations. The Statute of the court is commonly called "Rome Statute." Article 5 lays down that the court shall have jurisdiction to decide on the most serious crimes i.e. (a) the crime of genocide (b) crimes against humanity (c) war crimes (d) the crime of aggression. Article 7 of the Statute lays down that "crimes against humanity" means murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence, persecution against any identifiable group, or gender enforced disappearance of persons, the crime of apartheid, or other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2.7 Office of the U.N. High Commissioner for Human Rights (OHCHR)

In connection with the programme for reform of the United Nations, the office of the UN High Commissioner for Human Rights and the Centre for Human Rights were consolidated into a single office of the United Nations High Commissioner for Human Rights (OHCHR) on 15th September 1997. It is located in Geneva. The High Commissioner advises the Secretary General on the policies of the UN in the area of human rights.

Functions

a) The OHCHR promotes universal enjoyment of all human rights
b) The office plays a leading role in human rights issues
c) The office promotes international co-operation for human rights
d) The office stimulates anc co-ordinates action for human rights

e) The office promotes universal ratification and implementation of international standards

f) The office assists in the development of new norms

g) The office supports human rights 'Organ and Treaty' monitoring bodies

h) The office responds to serious violations of human rights

i) The office undertakes preventive human rights actions

j) The office promotes the establishment of national human rights infrastructures

k) The office provides education, information, advisory services and technical assistance in the field of human rights.

2.8 Monitoring of Human Rights

There are at least six core human rights treaties, which have set up committees to perform the task of monitoring States Parties in compliance with their obligation, which are:

1. Human Rights Committee (HRC) by the International Covenant on Civil and Political Rights (ICCPR)

2. Committee on Economic, Social and Cultural Rights (CESCR) by the International Covenant on Economic Social and Cultural Rights (ICESCR)


4. Committee Against Torture (CAT) by the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
5. Committee on the Rights of Child (CRC) by the Convention on the Rights of the Child

6. The Committee on the Racial Discrimination (CRD) by the Convention on the Elimination of all forms of Racial Discrimination.

Resolution 1503 (XLVIII) adopted by the Economic and Social Council in 1970 allows individuals and non-governmental agencies to make petitions to the Human Rights Commission and its sub Commission on Prevention of Discrimination and Protection of Minorities and on situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights" and fundamental freedoms.\textsuperscript{20}

2.9 Declaration on the Right to Protect Human Rights

The Universal Declaration of Human Rights laid down the rights of human beings. It did not stipulate the means by which these rights can be promoted and protected. Protection of the universally recognised human rights itself requires certain rights to be given to the individual, groups and organs of the States despite the fact that the prime responsibility and duty to promote and protect human rights lie with the State. The right to promote and protect human rights is essential for the prevention of violations of human rights. In order to provide this right to individuals and other groups in the States, the General Assembly on the recommendation of the Economic and Social Council adopted a resolution entitled ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society’ to promote and protect universally recognised human rights and fundamental freedoms often referred to as the Declaration of the Human Rights Defenders on 9\textsuperscript{th} December, 1998.\textsuperscript{21} Some of the rights laid down in the Declaration are:
1. Everyone has the right to promote and to strive for the protection of human rights (Article 1)

2. Each State has a prime responsibility and duty to protect, promote and implement all human rights by adopting necessary measures (Article 2)

3. Each State shall adopt necessary legislative, administrative and other steps to ensure that the right to protect human rights is effectively guaranteed (Article 2)

4. Everyone has the right to meet or assemble peacefully, to form, join and participate in non-governmental organisations, associations or groups and to communicate with non-governmental or inter-governmental organisations for the purpose of promoting and protecting human rights (Article 5).

5. Everyone has the right to know, seek, obtain, receive and hold information about all human rights including the access to information as to how those rights are given effect in domestic, legislative, judicial and administrative systems (Article 6)

6. Everyone has the right to submit to Governmental bodies and agencies and organizations concerned with public affairs, criticism and proposal for improving their functioning (Article 8)

7. Everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of the right to promote and protect human rights (Article 9)
8. Individuals, non-governmental organizations and relevant institutions have an important role to play in making the public more aware of questions relating to human rights through activities such as education, training and research in these areas and to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities (Article 16).

9. Individuals, groups, institutions and non-governmental organizations have an important role to play in promoting human rights and contributing, as appropriate, to the promotion of the right of everyone (Article 18).

10. The State has responsibility to promote and facilitate the teaching of human rights at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teachings in their training programme (Article 15).

11. No one shall participate by act or by failure to act in activities violating human rights and no one shall be subjected to punishment or adverse action of any kind for refusing to do so (Article 10).

12. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights (Article 12).
2.10 Key International Conventions on Human Rights

2.10.1 Genocide

The term 'Genocide' is derived from the Greek term 'genos' (race) and the Latin verb *caedere* meaning to kill or to cut down. The General Assembly of the U.N. adopted the Convention of the Prevention and Punishment of Genocide, in December 1948. It came into force on January 12, 1951. As on October 10, 2001, the Convention had 133 State Parties.

2.10.2 Apartheid


2.10.3 Apartheid in sports

The General Assembly adopted the International Declaration Against Apartheid in Sports on 14th December 1977. On 10th December 1985, the General Assembly adopted the International Convention Against Apartheid in Sports.

2.10.4 Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The General Assembly on 9th December 1975 adopted a Declaration on the protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment. On 10th December 1984 a Convention, known as the Convention Against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly.
2.10.5 Slavery and Slave Trade

Under the auspices of the League of Nations, the International Slavery Convention was adopted on 25th September 1926. In 1953, the Protocol amending the Slavery Convention on 25th September 1926 was adopted which transferred to the United Nations, the functions and powers that had been undertaken by the League of Nations.

2.10.6 Forced Labour

In order to suppress forced labour, a Convention was conducted for the abolition of forced labour, which was adopted by the General Conference of the International Labour Organisation on 25th June 1957. It came into force on 17th January 1959.

2.10.7 Traffic in Persons and Prostitution

In order to curb traffic on persons, a Convention for the Suppression of the Traffic on Persons and the Exploitation of Women was concluded on 2nd December 1949, under the auspices of the United Nations.\(^\text{25}\)

2.10.8 Elimination of Racial Discrimination

To make the provisions on racial discrimination binding on the States a Convention was adopted by the General Assembly on 21\(^\text{st}\) December 1965, known as International Convention on the Elimination of all forms of Racial Discrimination.\(^\text{26}\)

2.10.9 Elimination of Discrimination Against Women

As early as 1946 the Commission on the Status of Women was established to deal with women's issues. The General Assembly on 7\(^\text{th}\) November 1967 adopted a declaration on the Elimination of Discrimination Against Women and in order to implement the principles set forth in the
Declaration, a Convention on the Elimination of all forms of Discrimination Against Women was adopted by the General Assembly on 18th December 1979. In addition to the above Conventions three Conferences were held during the U.N. sponsored International Women's Decade (1976-1985), in Mexico City in 1975, in Copenhagen in 1980, and in Nairobi in 1985. The fourth World Conference on Women held in 1995 (4-15 September 1995) in Beijing commonly called Beijing Conference stated that women's rights are human rights.

2.10.10 Rights of the Child

The Universal Declaration of Human Rights stipulated under paragraph 2 of Article 25 that childhood is entitled to special care and assistance. The above principle along with other principles of the Universal Declaration concerning the child were incorporated in the Declaration of the Rights of the Child adopted by the General Assembly on 20th November 1959. The Convention on the Rights of the Child was adopted by the General Assembly by consensus on the 30th Anniversary of the Declaration on 20th November 1989, which came in to force on 2nd September 1990.

2.10.11 Right of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Covenant on Civil and Political Rights under Article 27 provided that persons belonging to ethnic, religious and linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language. Inspired by the above, the General Assembly on 18th December 1992 adopted the Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities.
2.11 Conclusion

The analysis of various human rights provisions of the United Nations with special reference to the composition, function and procedure followed by the organs of the United Nations for the implementation of human rights, reveals the legal character of these provisions and the actual work done by all the principal organs of the U.N. The Economic and Social Council has contributed much to the protection of human rights through its various Commissions. The International Court of Justice, the International Criminal Court and the National Courts repeatedly quote the human rights provisions of the U.N. Charter. The U.D.H.R., the I.C.C.C.P.R. and the I.C.E.S.C.R. constitute a triad, often referred to as the 'Magna Carta of Humanity'.

Despite the numerous activities of the U.N. for the promotion and observance of human rights, many violations and denials of human rights still obtain all over the world. The concept of "National Sovereignty" continues to be a formidable obstacle in the observance of human rights. If the international community has a future, the United Nations will have to adjust itself to new circumstances. Though the United Nations have contributed much to the promotion, protection and observance of human rights yet their remains much more to be done. It has "sown for days ahead;" it has achieved more than what might have been expected, less than what might have been hoped. 30
Kofi Annan, Secretary General of the United Nations in his message to the world on the 50th Anniversary of the Universal Declaration told humanity what its message is for the generation ahead.\textsuperscript{31}

It is the universality of human rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force.

The struggle for universal human rights has always and everywhere been the struggle against all forms of tyranny and injustice - against slavery, against colonialism, against apartheid. It is nothing less and nothing different today.

Young friends all over the world,

You are the ones who must realize these rights, now and for all time. Their fate and future is in your hands. Human rights are your rights. Seize them. Defend them. Promote them. Understand them and insist on them. Nourish and enrich them. They are the best in us. Give them life.
References and Notes


2 P.N. Bhagwati, Supreme Court of India, Inaugural Address in the Seminar on Human Rights Organised by International Law Association (Allahabad Centre, 1980): 7. (Laws Promulgated in the Reigns of Urukagina of Lagash (3260 B.C), Sargon of Akkad (2300 B.C) and Hammurabi of Babylon (1750 B.C) cited in the Inaugural Address of Bhagwati.


4 P.N. Bhagwati, Seminar on Human Rights 7.


8 Declaration of the United Nations signed on January 1, 1942 at Washington, signed by 26 states, including USA, UK, USSR and China.


11 J.L. Briely 293.


20 Resolution No. 1503 (XLVIII) adopted by the Economic and Social Council in 1970.


### CHAPTER III

**HUMAN RIGHTS IN INDIA - AN OVERVIEW**

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3.1 Introduction
Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian subcontinent over a very long stretch of time. As Jawaharlal Nehru notes, there is "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods." The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights throughout the history of human civilization.

The Indian concept perceives the individual, the society and the universe as an organic whole. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity." The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, "is a humanitarian doctrine par excellence, dating back to the third century B.C." Jainism too contained similar doctrines. According to the Gita, "he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient" is dear to God. It also says that divinity in humans is represented by the virtues of non-violence,

3.2 Origin and Development of Human Rights in India
The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, "is a humanitarian doctrine par excellence, dating back to the third century B.C." Jainism too contained similar doctrines. According to the Gita, "he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient" is dear to God. It also says that divinity in humans is represented by the virtues of non-violence,
truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living beings, freedom from covetousness, gentleness, modesty and steadiness – the qualities that a good human being ought to have.\(^5\) The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.\(^6\)

### 3.2.1 Ancient Hindu Law of Human Rights

Scholars who have spent long time in lucubration on the Hindu "Dharmasastras" and the "Arthasastras" and other legal treatises of the past have discovered an amazing system, which, interalia, regulates the duties of Kings, judges, subjects and judicial as well as legal procedures. The central concept is Dharma, the functional focus of which is social order. The message is "Dharma" as the supreme value, which binds kings and citizens, men and women. Human rights gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharmasastras are clear and categoric.\(^7\)

The independence of the judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of Hindu monarchy, the administration of justice always remained separate from the executive. It was, as a rule, independent both in form and spirit. It was the Hindu judicial system that first realized and recognized the importance of the separation of the judiciary from the executive and gave this fundamental principle a practical shape and form. The case of Ananthapindika \(v.\) Jeta reported in the Vinaya-Pitaka,\(^6\) is a shining illustration of this principle. According to it, a Prince and a private citizen