CHAPTER TWO

MAINTENANCE AS A BASIC HUMAN RIGHT

Human Rights are the idea of our time. They are products of the democratic world. The human rights, we talk of today are much reformed than the 'moral rights', 'natural rights' and 'rights of man', philosophers have debated for so long. But no time is ever really good for human rights. Despite the confident words of U.S. Bill of Rights, the French Declaration on the Rights of Man, and the Universal Declaration, they have not fared well either in principle or in fact.\(^1\) Those with power have always found persuasive reasons to deprive the rights of those without it, either by their silence, coercion or otherwise. The post - 1945 phenomenal human rights concept includes now rights less commonly understood to fall under the rubric of human rights.\(^2\) Besides classical human rights, socio economic rights have also been recognized and declared by national and international documents to fall within the purview of human rights. Yet another phenomenal change in the human rights jurisprudence is that individuals no longer are aliens under the international law and states no longer can avoid their human rights obligations towards their subjects.

\(^1\) Louis Henkin, *The Rights of Man Today*, Stevens & Sons Ltd., London, 1979, at p.XIII.

2.1 HUMAN RIGHTS - EVOLUTION AND GROWTH

"All human rights are universal, indivisible, and interdependent and inter-relate."3 So was observed on the characteristics of human rights when analyzed at the United Nations World Conference at Vienna in June 1993. Human rights are difficult to define. Generally, they are regarded as those fundamental and inalienable rights, which are essential for life as a human being.4 There is, however, no consensus as to what these rights should be. Human rights have, therefore, escaped a universally acceptable definition. The phrase have been undergoing a continuous evolution. The concern which it receives from the international community is such that it acquires new meanings in the developing universe. However, under contemporary international law, human rights are classified under three heads, "first, second and third generation" rights.5

The civil and political rights that derive from natural right philosophy of Locke, Rousseau and others and that have been traditionally been given priority by western states constitute the 'first generation rights'. The second generation rights are those economic, social and cultural rights that attained recognition in the twentieth century with the advent of socialism. Jurisprudential debate still prevails as to the human rights character of second generation rights.6 The idea of 'third generation'

of human rights emerged as recent as 1970s and is supported predominantly by developing states. The first two rights are enjoyed by the individuals and differ in themselves in that, the former imposes negative obligation on the state whereas the latter, a positive duty. The distinguishing feature of the third 'generation' right is that, the focus is on collective as opposed to individual rights, as in the case of first and second 'generation' rights. The right to development and the right to self-determination are two of the principal examples of third generation rights.7

The human rights movement represents the historical journey travelled by man ever since the beginning of an institutionalized political and social order.8 The road travelled has been historic and impressive with its origin in medieval European moral and political theory. The human rights philosophy was shaped by the writings of John Locke and Hugo Grotius, followed by Rousseou's principles of the social contract and Thomas Paine's 'The Rights of Man'.9 These rights were also regarded as natural rights as they were endowed by the creator and Supreme Being thus implying the authority for the proposition that "men are born free and equal in respect of rights" which are sacred and undeniable.10 Seen in the meaning as 'natural rights' this had given birth to the Magna Carta (1215) in

7. Supra n.4, p.206.
9. Id.
England, the Bill of Rights in the U.S. Constitution (1791) and the Declaration of the Rights of Man in France (1789).\(^\text{11}\)

The birth of human rights jurisprudence is marked by the American and French revolutions of the 17th and 18th Century.\(^\text{12}\) They stand testimony to vindication of certain human values and man's struggle to protect his basic rights. The more immediate reason for the genesis of international concern for human rights, were however, born out of the events connected with the origin and conduct of Second World War. The war, fiercest in human history, brought infinite misery and devastation. The league of nations was founded with dedication towards maintenance of peace.\(^\text{13}\) But the efforts failed with the outbreak of the second world war. It also awakened the world as to the futility of entrusting the protection of human rights, solely to the internal jurisdiction of nation states. Widespread conviction spread towards securing an effective international protection of fundamental human rights. A great deal of discussion took place in this regard. The Atlantic Charter (1941) and thereafter the Dumbarton Oaks proposals prepared the way for the United Nations Charter (1945).\(^\text{14}\) The development of human rights concept therein after is fast and universal.

\(^\text{11}\) Duda P.N. Dreams of Stills - Sidelights on the problems of sanction for enforcement of human rights, \textit{supra} n.8, p.62.


\(^\text{14}\) \textit{Supra} n.8.
2.1.1 U.N. Charter

The U.N. Charter marked the formal realization that human rights are a matter for international concern. The Charter provides for a multi-purpose organisation the establishment of which is further reasons authenticated in the preamble. The Charter recognized human rights and affirmed its faith in protecting the same by competent international action. The theme of individual rights and freedom finding a place in an international treaty was not only unprecedented but was also a complete innovation in international law and relations. It is in this regard, principally, the United Nations differs from its predecessor, the League of Nations.

The U.N. Charter, the first of its nature, makes numerous references to human rights. The very opening words "We the people of the U.N." gives much emphasis on individuals rather than the states. Article 1 speaks at the very purpose of establishing the United Nations and articles 13, 55, 62 and 68 are some other provisions that specifically mention about human rights. By incorporating these provisions on human rights, it was responding not only to the past, but provide also for the long term needs of human society. Article 68 provided for setting up a Commission for Promotion of Human Rights. Pursuant to this and on the initiation taken by the Economic and Social Council of the United Nations (May 1946) came the Universal Declaration of Human Rights on 10 December 1948.

15. U.N. was constituted with the signing of a Charter on June 26, 1945 by the delegation of fifty states.

16. For the text, see Annexure I, infra.


2.1.2 Universal Declaration of Human Rights 1948

The Declaration is a unique and comprehensive international instrument covering the whole field of human rights. It contains an elaborate list of human rights intended as a common standard of achievements for all peoples of all nations. In context the Declaration is dominated by political values of the victor countries and is heavily based on the Magna Carta, the US Bill of rights and the Declaration of the Rights of Man, to which some economic rights were added on USSR suggestion. The implementation of the Declaration vests with United Nations, whose Charter is the organic law in the matter. This Declaration came really as a milestone on the road of human progress and in the words of Mrs. Eleanor Roosevelt was termed as 'the Magna Carta of all mankind'.

The Universal Declaration of Human Rights for the first time recognized certain of the basic rights of man, as an individual, as fundamental human rights which the subscribers to the Charter of the United Nations must always respect and honour. The human rights declared under the Universal Declaration are no longer the subject of guarantee only to individual nations but a guarantee of the world organization for all human beings anywhere in the world. Article 1 proclaims that "all human beings are born free and equal in dignity and rights". The Declaration further states that "everyone is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind, such as race, colour, sex, language, religion, political or other status".19 Articles 2 to 21 deal with the traditional civil and political rights. Articles 22 to 28 of the Declaration set

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forth, mostly in general terms the economic, social and cultural rights. They provide for right to security, right to an adequate standard of living and right to education.\textsuperscript{20} Article 28 is most novel in that it declares that "...everyone is entitled to a social and economic order in which the rights and freedoms set forth in the declaration can be fully realised".

The Declaration, also called as Bible of Humanists, despite its innovative and welcome enumeration of the catalogue of human rights and fundamental freedoms, has failed to stir the human conscience.\textsuperscript{21} The words and deeds of the national governments in respect of human rights are often at much variance with the proclaimed standards in the Declaration.\textsuperscript{22} Despite its non-binding nature, the Declaration proved to be the starting points of a new legal order and it is profoundly claimed that the process of transformation from constitutionalism to internationalism of human rights issue, initiated by the Charter, received a great fillip with the adoption of the Declaration.\textsuperscript{23}

### 2.1.3 INTERNATIONAL BILL OF RIGHTS

To give binding effect to the Universal Declaration of Human Rights in the year 1996 the United Nations’ General Assembly adopted three other covenants and legal instruments which defend and guarantee the

\begin{align*}
20. & \quad \text{Articles 22, 25 and 26 of the Declaration. For the text, see Annexure 2, infra.} \\
21. & \quad \textit{Supra} n.17, \; p.33. \\
22. & \quad \textit{Ibid.} \\
23. & \quad \textit{Id.}, at p.34.
\end{align*}
protection of human rights. They are the International Covenant on Economic, Social and Cultural Rights 1966, the International Covenant on Civil and Political Rights 1966 and the optional protocol to the latter covenant. The Covenants are treaties binding on the states which ratify them and together they constitute the four corners of the mighty edifice of international human rights and are hence called the International Bill of Human Rights. In short they are the 'Magna Carta' for mankind.

2.1.3.1 International Covenant on Civil and Political Rights 1966

The Covenant on Civil and Political Rights recognizes the right of every human person to life, liberty and security of person, to privacy, to freedom from cruel, inhuman or degrading treatment and from torture, to freedom from slavery, to immunity from arbitrary arrest, to a fair trial, to recognition as a person before the law, to immunity from retroactive sentences and to freedom of thought, conscience and religion. Family is identified as the natural and fundamental group unit of society and protection is assured to the married partners and children.

2.1.3.2 International Covenant on Economic, Social and Cultural Rights 1966

The Covenant on Economic, Social and Cultural rights recognizes the right to work and a free choice of employment, to fair wages, to social security, to adequate standard of living, to freedom from hunger and for health and education. States which ratify the Covenant acknowledge

24. Supra n.11, p.15.


26. Article, 6, 9, 11 and 13. For the text of the Covenant. See Annexure 4, infra.
their responsibility to promote better living conditions for their people. State’s reports on their progress in promotion of these rights are reviewed by a committee of experts appointed by the Economic and Social Council.

Both the Covenants show as many similar provisions as possible, the provisions of the preamble and of Articles 1, 3, and 5 of the International Covenant on Civil and Political Rights are almost identical with the provisions of the preamble and of the Articles 1, 3 and 5 of the International Covenant on Economic, Social and Cultural Rights. The preamble to each Covenant serves as an introduction to the Articles that follow and sets forth general principles relating to the inherent dignity of the human person and portrays the ideal of freeman in accordance with the Universal Declaration of Human Rights. They reiterate the obligation of states under the Charter of the U.N. to promote human rights and reminds the individual of his responsibility to strive for observance of human rights. Both the preambles emphasis the unstint commitment undertaken by the United Nations to the mankind. They seek to unfold the common object which are intended to be achieved through provisions enumerated under the Universal Declaration.

2.1.4 The Convention on the Rights of Child

The human rights field has been protecting children as human beings. There exist several convention and treaties protecting varying interest of the children. The chief and paramount among them is the Convention on the Rights of the Child. On 20 November 1989 the United Nations General Assembly has adopted by unanimity the Convention of the Rights of the Child which entered into force on 2 September 1990. The expression of so wide a consensus upon the opportunity of establishing a binding legal instrument for
global protection of children is the goal of an increased awareness concerning the many problems that affect children worldwide.

In fact the first initiation towards protection of the children began with the founding of a 'save the children' movement after the First World War. This led to the formulation of a formal document, 'Declaration of Geneva' in 1924 by the League of Nations. The document did not have much impact at that time. But after the horror of another world war in 1948, the Declaration of Geneva was revised and amplified, and the resulting text formed the basis of ten-point "Declaration of the Rights of the Child" which was unanimously adopted by the United Nations General Assembly on 20 November 1959.

The 1959 Declaration enumerated the principles and the entitlements for the care and protection of children. It is mainly concerned with economic, social and cultural rights. The Declaration does not mention the word 'rights' except in the title and preamble. Yet it must be noted that it was in the preamble of the 1959 Declaration that the problem of implementation of children's right was first mentioned. Based on this Declaration and by the untiring efforts taken by UN body with the co-operation of global nations came the Convention on the Rights of the Child, 1989.

The Convention covers a variety of aspects touching upon the interest of children. Besides protecting the civil and political rights and cultural rights it gives much emphasis on economic and social rights and provides for assuring social security to children.27 The economic and social aspect

27. The Convention on the Rights of Child, Article 26. For the text, see Annexure 5.
includes right to adequate standard of living, right to the highest attainable standard of health care, right to education and right to social security. The note worthy provision of the Convention is Article 3. It states "in all actions concerning children... the best interests of the child shall be a primary consideration." That is to say that whenever a child's right is in the process of being affected the focus must be on the child's welfare and not on its parents' or legal guardians' wills. The importance of the Article 3 lies in the fact that for the first time it grants children the right to their best interest. By doing this it becomes autonomous and its no longer a tool in the hands of parents or legal guardian. It follows that by the passing of this Convention children ought to be accorded also the right to the judicial review of cases in which there are apparent abuses of interpretation of the best interests clause.

Another contribution of utmost importance to the cause of children's protection is that states parties are bound to take all appropriate measures to prevent abuse and neglect of children.

In spite of the salient features of the Convention, it is not free from criticism. Rather than seeing the Convention as an attempt to group together the existing legislation's concerning children's rights, it should be seen as one setting rules for the protection of the children whose application has to be monitored by the UN body.

28. Ibid., Article 27.
29. Ibid., Article 24.
30. Ibid., Article 28.
31. Ibid., Article 3.
2.1.5 Regional Conventions

Responses on a continental basis have produced the three regional arrangements, the European Convention for the Protection of Human Rights and the Fundamental Freedoms and the European Social Charter concluded by the members of the Council of Europe, the American Convention on Human Rights adopted by the Organization of American States and the African Charter on Human and Peoples' Rights drafted by the Organization of African Unity.

2.1.5.1 European Convention for the Protection of Human Rights and the Fundamental Freedoms

The Council of European Organization founded in 1949 has grouped the Democratic European States. This has drawn a Convention towards safeguarding the human rights of their member states and is termed as European Convention on Human Rights. The Convention mainly incorporates civil and political rights enshrined in the Universal Declaration of Human Rights. The economic, social and cultural rights in the Universal Declaration find their way in the European Social Charter of October 18, 1961. By virtue of this Convention the contracting states undertake to secure to every one within their jurisdiction a number of human rights and fundamental freedoms which are set forth in the Convention. Of the several rights and freedoms protected under the Convention and its protocols the chief that touches upon the personal aspect of members are right to life, right to liberty and security of person, right to fair trial in civil

33. Ibid. Article 2.
34. Ibid., Article 5.
and criminal matters, and prohibition of retroactive criminal laws. The right to respect for private and family life, home and correspondence, freedom of thought conscience and religion, right to marry and found a family and prohibition of discrimination and the enjoyment of rights and freedoms has been given special mention. The remedy in case of violation of any of the rights and freedoms as set forth in the Convention is left with the national authorities. The enjoyment of rights should be free from discrimination on grounds of sex, language, religion or origin. The Convention also has established an effective machinery consisting of a Commission, a Court, and the Committee of Ministers of the Council of Europe for effective enforcement of the undertakings by the contracting states.

2.1.5.2 The European Social Charter

The European Social Charter of 1961 also undertakes to promote the economic, legal and the social protection of family life by means of social and the family benefits. The contracting parties declare the intention to take all appropriate and necessary measures towards ensuring the effective enforcement of the undertakings by the contracting states.

35. Ibid., Article 6.
36. Ibid., Article 7(1).
37. Ibid., Article 8.
38. Ibid., Article 12.
39. Ibid., Article 14.
40. For the text, see Annexure 6.
41. Ibid., Article 13.
42. European Social Charter, Article 16. For the text, see Annexure 7.
exercise of the rights of mother and children to social and economic protection.43

2.1.5.3 American Convention on Human Rights 1969

The American Convention on Human Rights, which was drawn upon the European Convention on Human Rights, the American Declaration of the Rights and Duties of Man, 1948, and the International Covenant on Civil and Political Rights, 1966, reflects similar sentiments towards protecting the civil and political rights all along with certain socio-economic rights.44 Specific rights related to family circle and the rights of minor children are also given special emphasis.45 The Convention assures also the right to life46 and the right to equal protection.47 An obligation has also been imposed on that state parties to take measures for progressive development48 and the obligation to respect the rights and freedom recognised by the Convention.49 For the enforcement of Convention rights there exists two organs; the American Commission on Human Rights and the American Court of Human Rights. An Inter-American Commission on Human Rights was also created in 1960 and was re-established in 1969.

43. Ibid., Article 17.
45. Ibid., Article 17 and 19. For text, see Annexure 8.
46 Ibid., Article 4.
48 Ibid., Article 26.
49 Ibid., Article 1.
2.1.5.4 **African Charter on Human Rights and People's Rights, 1981**

The Heads of the Organization of African Unity (OAU) adopted the African Charter on Human Rights on June 17, 1981. This is the first human rights document that emphasized upon the peoples' rights i.e., the 'third generation' rights, viz., right of self-determination. The Charter recognises family as the natural unit and basis of society and seeks for protection by the state. Every individual has been guaranteed certain rights and subjected to duties. For the enforcement of the rights and duties under the Charter no judicial or quasi judicial organ exists but their role is played by the African Commission on Human and Peoples' Rights.

2.2 **RIGHTS PROTECTED UNDER THE CONVENTIONS AND COVENANTS**

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the American Convention on Human Rights and other special subject treaties have contributed towards a growing body of human rights law. They stand testimony to the fact that human rights are now universally recognized and that the governments know the yearnings of world community.

The international human rights law in the past have been viewed primarily as the protection of the individual against the arbitrary power of

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the state. They confined themselves in protecting the rights and freedoms of the individual, chronicled under the modern international instruments, as civil and political rights. The International Covenant on Civil and Political Rights, and the European Convention on Human Rights are the Conventions prominent on this aspect and protect rights such as right to life, right to equality, right to freedom of speech and expression, the free exercise of religion, right to travel freely and the right to form associations. The rights termed in the language of the 21st century as first generation rights are aimed at protecting the rights of the individual. Such rights in turn impose a negative duty on the nation states.

Then came the period, when we realized that classical rights and freedoms are not by themselves enough. Without Economic, Social and Cultural rights, the enjoyment of classical rights and freedoms cannot be meaningful. Civil and political rights are priceless and invaluable, because without them freedom and democracy cannot survive. But, when large masses of people in the developing and underdeveloped countries, are suffering from poverty, want and destitution, emphasis on civil and political rights alone will not be sufficient. If only social and economic rights are ensured to those large masses that they will be able to enjoy civil and political rights and in turn become equal participants in the democratic process. Hence, both categories of human rights are found equally important. Further, there is a close inter-linkage between the two because all human rights and fundamental freedoms are indivisible and inter-dependent. The promotion and respect for and enjoyment of one category of human rights cannot justify the denial of the other category of human rights. Thus came the stage for recognition of neo-classical socio economic rights termed as 'second generation' rights.
The second generation rights, aimed at protecting the economic, social and cultural aspirations of human beings vide the concept of human rights are right to work, right to just and safe conditions of work, right to receive fair remuneration and to organize and bargain collectively, the right to women and children to protection, a regime of social security and medical assistance and the like. The characteristic feature of these rights which distinguished themselves from that of ‘first generation’ rights is that they impose on the state a positive obligation. Prominent among the human rights conventions which embody these aspirations are the International Covenant on Economic Social and Cultural Rights and the European Social Charter.

In the evolution of human rights law, we have come to recognize a third category of human rights, put under the head ‘third generation’ rights. In contrast to the individuals rights protected under the ‘first and second generation’ rights, these are collective or group rights such as right to development, right to healthy human environment, right to peace and right to self-determination. The developmental right is enshrined in the Declaration on the Rights to Development.

2.2.1 Right to Life as a Human Right

The Universal Declaration sonorously declares that ‘everyone has the right to life’. To say that all men have a right to life is to say that all men, who naturally attach paramount importance to survival, can claim to be left in peace and are entitled to have the claim recognized. To enjoy human rights

52. Universal Declaration of Human Rights, Article 3.
one must be a living individual. Right to life is thus a basic human right. When one is alive, to keep him so tend to arise other needs which are also protected by the human rights law. ‘Every one’, says the Universal Declaration in Article 25(1), ‘has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services’. The same objective is formulated again under Article 11(1) of the Covenant on Economic Social and Cultural Rights which reads as: ‘The state parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The state parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent’.53

A reading of Article 2(1) of the Covenant reveals that this obligation has been imposed on the state. It declares ‘Each state party.....undertakes to take steps, individually and through international assistance and cooperation.....to the maximum of available resources with a view to achieving progressively the full realization of the rights’.54 As the words reveal, the obligation of the state is coupled with ‘available resources’ and objective is ‘progressive’ in approach. The European Social Charter also contains a requirement for a decent standard of living, but this gains

53. Covenant on Economic, Social and Cultural Rights, Article 25 (1).
54. Ibid., Article 21.
place in the context of fair pay for employed workers. Most of the international conventions recognize the right of everyone to the enjoyment of the 'highest' and best attainable standard of health, physical or mental.

2.2.2 Protection of the Family

Protection of the institution of marriage and family is a good example of a right that straddles the supposed distinction between civil and political rights on the one hand and economic social and cultural rights on the other. 'Men and women of full age', says Article 16(1) of the Universal Declaration, 'without any limitation due to race, nationality or religion have right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution'.\(^\text{55}\) And in paragraph (2) of the same Article present the words 'marriage shall be entered into only with the free and full consent of the intending spouse'. The goal appears almost in all the relevant treaties, both the Covenants, the European Convention and the Social Charter and both the American and the African treaties.

Marriages and families are so fundamental to human existence that one simply cannot put the rights they entail into a single category of convenience. They involve civil status, economic relationship, social structures and cultural customs and values. In all these fields, of course, much of the world is still far from realizing the rights to their citizens, now declared in the International Code. In many countries including that of India, women cannot be truly said to enjoy equal rights in relation to all the

\(^{55}\) Universal Declaration of Human Rights, Article 16(1).
aspects of marriage. Indeed in many places they are still regarded as chattels - first by their parents and then by their husbands - and 'their free and full consent' to marriage is a myth. The sorry state is that even countries which have ratified the Covenant indirectly imposing themselves an obligation, either keep silence over this state of affairs or defend such practices on the ground that, as sovereign states, they are entitled to maintain national customs.

Article 25(5) of the Universal Declaration emphasizes that 'motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection'. Similar sentiment in good measure is reflected by the treaties. All of them, in varying degrees, give the kind of protection their states parties must provide for mothers and children. This ranges from registration of births, through working condition for women and paid maternity leave, to elaborate provision to ensure that child labour will not be exploited and that children's education will not be prejudiced by any work they do within or outside the family.

2.2.3 Protection of the Rights of the Children

Children are the conscious of the nation. They are supremely important national assets and its living malleable potential. The future of the any nation is largely determined on how its children grow and develop. Childhood is the most formative period in once life: a time of learning and formation of habits. The stage represents the weakest part of human society. It is at the stage children depend for their survival on adults and are thus prone to be neglected. Such neglect in term culminates their exploitation in
different areas such as child labour, sexual integrity or else, adoption of a delinquent behaviour in the society.

Children require guidance and respect. A child left alone would not know how to cope with technology and intricate patterns of social behaviour. It needs to be taken by the hand and shown the direction to be followed. Contemporaneously it ought to be allowed to make its own way and, by so doing, express its unique and priceless individuality. Childhood is therefore a period which requires special care.

The Convention on the Rights of the Child remains as the spectrum of international legislation concerning children. The Convention comprehensively and as well as potentially protects children against any forms of abuse and neglect. Again by signing the Convention the individual nations bound themselves to implement the contents of the Convention. Furthermore, there is always the domestic law which has to reflect the principles of the Convention towards protecting the best interest of the child.

2.3 ENFORCEMENT OF HUMAN RIGHTS

Under the Charter, the U.N. is obliged to promote "respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex language or religion". In furtherance of this, the ECOSOC, in February 1946 established the Commission on Human Rights under Article 68 of the Charter. The Commission acts as a permanent machinery for the supervision of protection of rights. In addition, there exists also the Commission on Status of Women.
2.3.1 Mechanism for Enforcement

2.3.1.1 Human Rights Commission

The Human Rights Commission’s work is related to standard setting, promotion activities and enforcement of human rights. Towards enforcement, the Commission is empowered to receive private complaints and after ascertaining the nature of the complaint, the government concerned may be invited to give its observation. In case of need, the Commission can investigate the alleged human rights violations, either by itself or through special working groups.

2.3.1.2 Commission on the Status of Women

The Commission has done a major job in the human rights area from the date of its very inception. It was charged with the function of preparing reports and making recommendations to the ECOSOC to promote rights of women. The Commission again played a pivotal role in norm creating for women’s rights. It drafted the most extensive convention on women’s rights - the Convention on the Elimination of All forms of Discrimination against Women 1979, which came into force on September 3, 1987. The Convention obligates state parties to eradicate all kinds of discrimination against women ‘in effect’ and in all walks of human activity. The Commission has succeeded in organizing a World Conference at Vienna wherein women’s rights were recognized as human rights. Much progressive efforts have been taken thereafter by the Commission to promote the status of women. India has ratified the Convention on July 9, 1993.
2.3.2 Effect of Enforcement

Human Rights are now recognized world around. Specific rights are also formulated in the Covenants. The provisions are for the promotion and protection of human rights, whether it be “first, second or third generation” rights. The Universal Declaration of Human Rights enumerates various rights but they are not intended to be legally binding. As regards the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights neither of the Covenant is effective in its implementation, nor serve any useful purpose in the protection of human rights. The rights, provided in the civil and political covenant are required to be made available to the individuals by the ratifying states immediately after ratification. But the obligation does not extend beyond the submission of reports to the Human Rights Committee. As regards the Economic, Social and Cultural Covenant the rights recognized therein being non-justifiable the state parties are merely required to take steps individually and through international assistance and co-operation with a view to achieving progressively the full realization of the rights enumerated therein.

The ideals though emphasized in the convention or covenant the enforcement measures are not highly effective. In the case of Economic, Social and Cultural Rights, the task of supervising the obligations undertaken by the nation states rest with an expert committee while the task of implementation is entrusted to ECOSOC. The objectives of the world documents though imminent and necessary in the modern world, its realization can best be achieved only when the member states show a positive response and take moral inclination to implement the same.
Though many countries responded positively and incorporated the ideals of the Convention in their national documents or legislation, few others still remain unperturbed over the changes that occur around them. Even countries which have ratified the Conventions and have taken a moral obligation to fulfill the same has not done much beyond the ratification.

Human Rights are a live issue in the world. But the existing implementation system has not served any useful purpose in the protection of human rights. The reality proves that it is completely ineffective. The absence of an effective international implementation machinery created a gap between the 'promises' and the 'performances'. So it is the responsibility of each state to ensure respect for the human rights within its jurisdiction. Individuals are the subjects of municipal law. The corresponding duty to provide these rights to the individuals rests on the states. States and individuals, are the two opposing subjects of rights and duties. If one fails to discharge its duties, other should have a right to enforce them under the international legal system. So that remedy may be provided and adequate relief may be given to the victims. Towards protecting the civil and political rights at least some remedy is available. But to enforce the Economic, Social and Cultural Rights, the individual has no remedy either as against the state or before the international forum.

The emergence of the human rights is much more than an intellectual achievement and much more than a method of reasoning or a method of organizing thought. The substantiation of international human rights norms is part of the larger process of attempting to reconcile law and equity, justice and mercy, equity and freedom. The reality being otherwise,
the development of human rights can only be in paper. The vast division of developed and underdeveloped countries pose an awesome picture. On the one hand, millions of people are still deprived of their basic necessities of life due to extremely bad economic and social conditions, while their affluent partners speak of their own human dignity, security, justice and equality. Unless they realise that mankind is one and human beings are equal and must enjoy at least the minimum of rights and freedoms, speaking of protecting global human rights, cannot but be a farce.

2.3.3 The Indian Experience

The scenario at Indian sub-continent neither look satisfactory. India has ratified the two Covenants in 1979. But nothing beyond ratification has been carried out to acclaim honour towards savior of human rights. It has failed even to perform the minimum obligation of submitting the report in time to the Human Rights Committee which it has undertaken by ratifying the Covenant on Civil and Political Rights. No reason whatsoever has been explained. Further it has not taken any step in amending the Constitution so as to make available to the citizens all the rights enshrined in the said Covenant, and the result is that the rights stipulated therein are not enforceable. India cannot feel proud and claim that human rights violations are not there in its territory.

The Directive Principles of the Indian Constitution which broadly incorporate the socio-economic rights enshrined in the Covenant on Economic Social and Cultural Rights are much part of human rights. They include within them such rights as the right to equal pay for equal work for both men and women, the right to protect the childhood and youth from
exploitation, the right to secure just and human conditions of work and for
maternity relief, the right to work, the right to a decent standard of life and full
enjoyment of leisure and social and cultural opportunities and the right to adequate and reasonable standard of living and right to free and compulsory education. What meaning these rights will carry when millions of ever-increasing Indian population starve and have no food to eat, no cloth to cover the naked body and no roof over their head to live. Our record in the areas of health, education and population control reflect much poorer than developing nations.

Leaving aside those rights ratified with reservation, other such rights which are ratified with an avowed obligation to fulfill the same towards its citizen, the government has not done much and many of the rights are yet to see the day of reality. Our hands are not clean even in respect of civil and political rights. To think of economic and social rights in such circumstances may be awesome. But civil and political rights cannot be acclaimed without re-structuring the socio-economic order. The governments’ blind eye towards legislation passed fully in pursuance of the obligations which it has undertaken by the Covenant are examples for this. Thus the aspirations of our founding fathers to provide these rights to individual citizen remain just as justices proclaimed in the preamble.

2.4 MAINTENANCE - A HUMAN RIGHT AS WELL

Human rights are the live issue of the world. The modern concept of human rights do not belittle the importance of Economic, Social and Cultural Rights. The realisation of Civil and Political Rights cannot be without fulfillment of Economic, Social and Cultural Rights. The distinction arose
out of academic interest and based on the emergent need for protection of rights disregarded much by arbitrary actions. The political atmosphere has changed now to give equal importance to Economic, Social and Cultural Rights on par with Civil and Political Rights.

The importance of Economic, Social and Cultural Rights is well realised by all world communities, if not the world community would not have joined hand in formulating an international code and drafted a separate Covenant on Economic, Social and Political Rights. The ratification of the Covenant impose directly an obligation on the member states to take steps towards achieving the goal incorporated therein. The ratification thus imposes a positive obligation on that state.

Human rights whether it be civil or political rights or otherwise is a world concern. Infringement of the rights of a member of one society certainly wounds the humanity of the member living at another national boundary. Progressive thinking now treats all humans belonging to a single world community. Hence even without ratification of the Convention or Covenant all nations owe an international obligation to protect human rights of members in its own community.

Human Rights are legal rights, nonetheless differ from it in certain respect. Legal rights impose correlative duty on others. My possession of right impose on you a correlative duty. Similarly, when I owe a duty that means possession of a legal right by you. In the case of legal rights the rights and the duties devolve mostly between individuals and at times between an individual and state. But in the case of human rights the
significant feature is that, the right is always enjoyed on an individual either alone or in groups and the correlative duty remains always with the state. The nation states hence owe a duty, whether by ratification or otherwise, to fulfil such obligations which are imposed on them by the international norms. This in turn confers a right on the individual to enforce the same through legal process. When the obligation is ratified, the duty is much more to warrant sanction, for it is an intentional breach and willful neglect on the part of the state.

The subject of human rights, we thought earlier, was primarily concerned with the protection of individual against arbitrary power of the state. But now, the protection of the individual vis-a-vis his fellow men within his own country is largely considered the business of natural law. To put it in specific words, the basic human right of right to live ought not to be disrupted either by state action or inaction. The same is true with the economic, social and cultural rights. The obligation herein being a positive duty, not only any failure to provide such rights to the citizen is a violation but also the state’s non-interference, when there is failure on the part of a member on whom the liability is delegated by the national legislation. As regards the obligation pertaining to the economic aspect, the state which has the primary obligation has delegated it to certain members who owe a moral duty and who can better assure the life and livelihood of certain members. It is imposed as a legal obligation to provide economic assistance to such members. The right though vested with the individual at all times, the duty transcends from the state to certain relatives vide statutory norms. The primary duty being always with the state, it has the obligation to see that the right to assistance is assured from the hands of such relatives.
Any failure on the part of relatives re-delegate the duty again to the state. Thus, the state should not only supervise the working measure of Section 125 of the Criminal Procedure Code, it should intervene when the right is denied to the member who are in their need of such economic assistance.

Legal Right of an individual is by definition an interest which has the protection of law. Right to maintenance is without dispute accepted as a legal right. Protection of legal right is in the first instance against the violation of human rights by state and include protection of human rights vis-a-vis his fellowmen in the community. Protection of the rights of individuals against state arbitrary action has given rise to human rights jurisprudence, now that it includes even acts by one individual as against another. The right to life assured to one thus needs to be protected as against not only by state action but also by such inaction on its part to stop disruption by another individual in the society. This applies not only to traditional rights classified under the head as civil and political rights, towards protection of which the human rights concepts emerged, but equally is applicable to economic, social and cultural rights. By ratifying the International Covenant on Economic, Social and Cultural Rights, 1966 the states have undertaken an obligation to provide to its citizen the basic economic, social and cultural requirements of its citizen. This is a positive duty, which in turn imposes a right on the individuals. The obligation is further strengthened by the constitutional provisions which are to direct a principle of state policy. The right provided thereunder though non-justifiable its inter-relation with other rights safeguarded under part III as fundamental, will certainly opt for judicial remedies. Courts in India have recognized such rights.
Even otherwise, the obligation ratified by the Convention and that has been incorporated in the national documents has been deduced as specific rights by legislation, either secular or personal. To people who are victims at their family level and who are in emergent need of economic assistance maintenance has been provided under Section 125 of the code, besides under other personal or matrimonial laws. The duty to maintain such of the relatives is imposed on the near relatives by statute. Thus the duty which the state owes has been delegated to individuals and this is possible since supporting such relatives is a moral and an equitable principle. Maintenance under Section 125 or under personal laws is nevertheless a right legally recognized. As the right assures directly the right to live which is necessary for keep life assured to be protected by the state, it not only remain as legal right but is also a human right. The state is the principal guardian of this right, though on moral consideration and legal force the role has been taken by the near dependence.