CHAPTER I
International Covenants on Human Rights: Background

The idea of human rights implies that every individual in a society needs certain basic conditions which are essential for the realization and development of the potential which nature has bestowed him/her with, as a human being. Rights are intrinsically bound up with the social environment and the relationship that exist, at a given time, between individual and the institutions on which its social existence depends. Thus rights are in a way, product of a given social order and, therefore, possess historical character. To understand human rights one must, therefore, first examine its history.

Human rights, in a sense, are as old as human civilization or when individuals started living in groups. It is obvious that in all eras and regions, societies, implicitly or explicitly, in legal terms or otherwise spelled out the 'right and wrongs' for their members, in terms of socially acceptable needs and the restrictions imposed by the needs to maintain social order. It is also a historical fact that very often, might prevailed over right and that those who were strong, dominated the weak. But the strong ones could do so up to a point. History also shows that from the dawn of civilization the rights of man
derived from the laws of Nature, from religion, from human experience and from observations and reflections have been a refuge against arbitrary use of human rights and in all eras men and women, groups and communities had rebelled against various forms of coercion or tyranny. In course of time, these understandings and norms of social behaviour gained recognition in different forms, in various parts of the world. They found expression, for instance in the Greek Political system and Roman Law in Europe, Confucius system in China and Panchayat system in India. They found expression in the concept of natural law and became the symbol of people's movement against arbitrary rule and despotism. The Magna Carta in England, American Declaration of Independence and the Bill of Rights, the French declaration of rights of man, the Bolshevik Revolution in Russia could be cited as important landmarks in the evolution of the concept of human rights.

Each of these systems and declarations have made important contribution in advancing the concept of human rights. However, being product of their own time and of the specific circumstances, they lacked totality of the concept and were either narrow in their scope and application or generally vague. For instance, in the Greek political system, rights existed only for the
'citizens' and not for the majority who were referred to as 'aliens' or slaves. Magna Carta yielded certain concessions only for the feudal lords (not for the common man), though it did set limitations to arbitrary rule and laid the foundation for the Rule of Law. The American Declaration followed by constitutional amendments or Bill of Rights contained fairly exhaustive guarantees for the rights of man, but in practice their application was largely confined to those who were referred as WASP (White Anglo-Saxon and Protestant). Slavery continued to be a part of the system; the blacks of African origin were referred to as 'Negro' and not as man. It was in 1864 that slavery was legally abolished after a bitter civil war.

Again, while the American and French declarations set the seal on the basic principles of equality before law, freedom of thought, human dignity and democratic government, the countries undergoing rapid industrialization were experiencing the need more for social justice and economic security. True, the French Declaration proclaiming liberty, equality and fraternity for all was, to date, the most revolutionary social concept, but liberty and equality were soon proving to be empty slogans for poor peasants and factory workers. Hence, beginning the mid-nineteenth century, the demand for economic security and social justice, in addition to civil and political rights, appeared
Bolshevik Revolution in Russia (1917), went a step further. It emphasised that economic and social rights were as important as, nay more, important than the civil and political rights.

In brief, in Europe and North America, the concept of natural rights was secularized, rationalized and democratized, by the end of the Eighteenth century. Thus, there emerged a concept what was called "The Rights of Man". This concept covered substantially what is now known as civil and political rights. Although, these rights were not fully secured but they widely recognized as norms. Beginning the mid-Nineteenth century, the developments that followed, some time accompanied by violence, within industrial capital economy of Europe and North America took a new direction. Struggle waged by the trade union considerably improved the lot of the majority constituting the working class. Flow of wealth and additional resources from colonial territories also had a cumulative effect in ensuring, along with civil liberties, a minimum of economic and social security to almost all the people.

While countries in Europe and North America, with rapid industrialization were, moving towards larger
freedoms both political and economic, the people of the rest of the world were more or less experiencing the sufferings and humiliations of colonialism and imperialism. During colonial era, it was but inevitable that rights available to the citizens of colonial powers were denied by the same powers to their "subject" in the colonies. It was natural that interaction and comparison between peoples of the two sides helped to generate wider awareness and demand for human rights among the people under colonial rule.

**Internationalization of the Human Rights:**

It was by the middle of the present century that as a result of concatenation of political developments the concept of human rights, universal in its approach, comprehensive in its content and reaffirming the principle that man is the measure of all things and that human rights is a matter of concern for international community as a whole gained grounds. True, the Covenant of League of Nations and Constitution of International Labour Organization contained certain measures which reflected international concern for human dignity and social welfare of the individual. However, the U.N. Charter is the first international instrument which reflected the concept of
human rights as we understand them today. The Charter made promotion of human rights as one of its basic purpose and obligated member states, to take joint and separate action in cooperation with the United Nations for promotion of human rights.

It is to be noted before 1945, questions relating to human rights were considered to be a matter between a nation/state and the people living within its territories. As a domestic issue they were outside the reach of international law. The United Nations Charter was the first international instrument to assert in unequivocal terms the fundamental obligations of newly established organization to promote human rights and fundamental freedoms for all without regard to race, sex, language or religion.¹

¹Although at the close of the First World War, international concern for human rights found expression in certain provisions of the Covenant of the League of Nations. States members of the League accepted the obligations to endeavour to secure and maintain fair and human conditions of labour for men, women, and children, also to ensure the just treatment of the indigenous inhabitants of their colonies. These provisions were of great significance in the evolutionary process. However, the concept of human rights demanding universal application and as such concern of international law and organization gained recognition only in the Charter of the United Nations.
The Preamble of the Charter reaffirms determination of the people of the United Nations' faith in fundamental human rights and in the dignity and worth of human person, equal rights of men and women of all nations, large and small.

The Charter also contains the idea that to maintain peace and security in the world, and to achieve international cooperation, it is essential to encourage respect for human rights and fundamental freedoms to all without any distinction. However, the charter put the idea to enhance universal respect for and observance of human rights in the purposes and principles of the Charter. But among all provisions relating to human rights, enumerated in the Charter, perhaps the most noteworthy one is Article 55 which reflects some of the revolutionary changes in the field of human rights. It contains the idea that the United Nations shall effort, to preserve peace, to develop friendly relations among nations, to promote higher standard of living to provide full employment, to improve the condition of economic and social progress and development and to enhance universal respect for and observance of human rights.
It is to be noted here that although Charter did refer to the concept of human rights and its universal application, yet the contents of the concept needed elaboration, precise definition and also adequate machinery to promote respect for and observance of these rights.

For this purpose, and also for other matters within the scope of United Nations Charter, the Economic and Social Council (hereinafter referred to as ECOSOC) has been given the power to establish commissions for the promotion of human rights. Accordingly, the Economic and Social Council in its very first session took the initiative in that direction. To begin with, it instituted a nuclear commission consisting of nine experts (which also included an Indian national).

The nuclear commission was *inter alia* requested to recommend the framework of the full commission which was to be established on a regular basis. Following its recommendation, the ECOSOC constituted, in 1946, a full

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commission, consisting of eighteen member experts (An Indian national was also among the experts of this Commission).  

The Human Rights Commission (hereinafter referred to as Commission) in its first session studied a number of draft bills on human rights and proposals on their implementation and had a general discussion on the form and content of an International Bill of Human Rights.

4 The nuclear commission on human rights met to consider composition of the full commission and its own terms of reference. In its first report to ECOSOC it made following recommendations:

(a) All members of Human Rights Commission should serve as non-governmental representative.

(b) All members of the United Nations should have the rights to nominate not more than two persons each for the commission. The list of nominees in full should be submitted to the Council, and from it ECOSOC may appoint members of the full Commission, paying due regard to their geographical representation and personal qualifications.

(c) The full Commission should consist of eighteen members elected for three years terms, and they should be eligible for reelection. It was also recommended that full commission should be responsible for determining the nature and form of the International Bill of Rights.

5 First session of the Commission on Human Rights was held from 27 January to 10 February 1947.

As recommended by the Commission, ECOSOC approved the appointment of a drafting Committee consisting of eight members of the Commission. The drafting Committee was to prepare, on the basis of documents supplied by the Secretariat, a preliminary draft of an International Bill of Human Rights.

As regards the form, which the draft of an International Bill could take, two views were put forward. One was that the draft, in the first instance, should take the form of a declaration, the other was that it should be in the form of a convention. It was agreed, however, by those who favoured the declaration form, that it should be accompanied or followed by a convention or conventions on specific groups of rights. It was also agreed by those who favoured the convention form that the General Assembly, in recommending a convention to member states, might make a declaration wider in content and more general in expression.

The drafting Committee, therefore, decided to prepare two documents, a working paper in the form of a declaration which would set-forth general principles or general standards of human rights, and a working paper in the form of a convention which would define specific rights.
and the limitations or restrictions in the exercise thereof. The Committee prepared and submitted to the Commission draft articles of an International Declaration of Human Rights and draft articles of an International Convention on Human Rights.

At its second session, held in 1947, the commission decided that the term 'International Bill of Human Rights' should be applied to the entire series of documents in preparation, namely, a Declaration of Human Rights, a convention or Covenant on Human Rights and measures of implementation. It established three working groups, one on the Declaration, other on the Covenant and a third on measures of implementation, on the basis of the reports of the first two working groups. The Commission drafted a Declaration of Human Rights and a Covenant on Human Rights. These drafts, together with the reports of the working group on implementation were transmitted to governments for observations, suggestions and proposals.

The Drafting Committee, at its second session, May 1948, revised the Declaration and the Covenant, taking into consideration the comments and proposals of governments.
At its third session, June 1948, the Commission once more redrafted the Declaration. The Declaration, thus redrafted, together with the draft Covenant as prepared by the drafting Committee, was submitted to the ECOSOC and was, in turn, transmitted by the Council in a resolution to the General Assembly.

The draft declaration was placed on the agenda of the third session, 1948, of the General Assembly and was discussed first in the Third Committee of the General Assembly (hereinafter referred to as Third Committee) and then in the plenary.7

On December 10, 1948, the General Assembly adopted and proclaimed the Universal Declaration of Human Rights. It defines specific rights, civil and political as well as economic, social and cultural - with equality and freedom from discrimination as a principal and recurrent theme. It spells out the right to life, liberty, and security of person, to fair trial by due process of law, to freedom of conscience, thought, expression, association and

7General Assembly Official Record, GAOR, 3rd Session, 3rd Committee Summary Records, 89th, 116th, 119th, 167th and 174th-179th meetings.
privacy, freedom of movement and the right to leave one's country and return to it, rights to marriage and family, right to work and leisure health care and education and so on. What is most significant is that it declares the will of the people to be the basis of the authority of government and calls for free periodic elections on the basis of universal adult suffrage. It should be noted that the universal Declaration was not conceived as law but as a common standard of achievement for all peoples and all nations. It stirred the moral consciousness as well as the political assertiveness of people in various countries. In other ways too, it has great impact, various parts of the Declaration have been cited in national constitutions and other international instruments as well as regional treaties and conventions. Notwithstanding its strong impact and the momentum that it generated world-wide for observation and protection of human rights, the Declaration carries no legal sanction to compel states to meet the obligation of observance and implementation of human rights enshrined in the Declaration. To seek such a legal framework and to convert the norms set in the Declaration into legally binding obligations. The Commission, therefore, started drafting the Covenant.
Drafting of the Covenants

Having adopted the universal Declaration of Human Rights, the General Assembly requested the Council to ask the Commission to continue to give priority to the preparation of a draft Covenant and measures of implementation.

Whether one Covenant or two:

At the very outset of its work on the subject divergence of opinion was on the question whether economic, social and cultural rights, on the one hand, and civil and political rights on the other, should be embodied in one covenant or two.8

It should be noted here, however, that those in favour of having two Covenants as well as those in favour of single Covenant were generally agreed that the enjoyment of civil and political rights and of economic, social and cultural rights are interconnected and interdependent, and

8 The question whether one Covenant or two Covenants should be drafted was discussed on many occasions. Reference may be made especially to the following documents: General Assembly Official Records (hereinafter referred to as GAOR) 5th session, 3rd Committee, 297th to 299th, 312th and 313th meetings. November 1950, ibid annexes agenda item 63(A/1559) ibid, 6th session 3rd Committee, 360th to 372nd and 387th to 390th meetings, 5 December 1951 to 16 January 1952, and ibid annexes agenda item 29(A/2121).
that when deprived economic, social and cultural rights
man does not represent the human person whom the universal
Declaration regards as the ideal of freedom. The diver­
gence of opinion appeared to arise from a difference of
approach rather than of purpose.

Those who were in favour of drafting a single
Covenant maintained that human rights could not be clearly
divided into different categories, nor could they be so
classified as to represent a hierarchy of values. All
rights should be promoted and protected at the same time.
Without economic, social and cultural rights, civil and
political rights might be purely nominal in character and
without civil and political rights, economic, social
and cultural rights could not be long ensured. There
should, therefore, be a single Covenant which embrace all
human rights.

Those in favour of drafting two separate Covenants
argued that civil and political rights were enforceable
or justiceable, or of an "absolute" character, while,
economic, social and cultural rights were not or might not
be that, the former were immediately applicable, while
the latter were to be progressively implemented and that,
generally speaking the former were rights of the individual against unlawful and unjust action of the State, while the latter were rights on which the State would have to take positive action to promote them. Since the nature of civil and political rights and that of economic, social and cultural rights, and the obligation of the State in respect thereof were different, it was desirable that two separate Covenants should be prepared.

It is to be noted that question of drafting one or two Covenants was intimately related to the question of implementation. If no measures of implementation were to be formulated it would have made little difference whether one Covenant or two Covenants were drafted.

After a long debate the General Assembly, eventually decided that there should be two Covenants one to contain civil and political rights and other to contain economic, social and cultural rights, that they contain as many similar provisions as possible and that both be approved and opened for signature simultaneously in order to emphasize their unity of purpose.

It should be noted here that when the Commission prepared the draft Covenant, India was one of the very few
Afro-Asian countries having its representatives in the Commission right from the very beginning. The drafting of the Covenant was a team work and its difficult to pinpoint specific role in the preparatory work. On various points, Indian suggestions were eventually incorporated in the text as emerged from the Commission.

After having completed drafting work the Commission submitted the draft to the ECOSOC for its consideration. The Council while considering the report of the Commission, did not deal with substance of the draft Covenant, but confined itself to the discussion of procedure. It decided on 29th July 1954 to transmit the draft Covenant to the General Assembly, together with the Commission's report and requested the Secretary General to bring these documents to the special attention of the governments of members and non members of the United Nations and to collect any comment, they might make.

To have the views of the member states on the provisions of different rights and on the provisions of

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implementation measures provided in the draft Covenant and to give final shape to them, the General Assembly decided to allocate the agenda item dealing with draft "International Covenants on Human Rights" to its Third Committee.

Discussion on the Draft in The Third Committee:

The Committee first took up consideration of all the articles relating to various rights, one by one, and adopted them over a period beginning 9th session to 18th session of the General Assembly (1954-63). It took up consideration of the provisions relating to implementation machinery at its 21st session (1966).

It should be noted here that the draft Covenant on Civil and Political Rights, as submitted by the Commission to the General Assembly, called for the establishment of a Human Rights Committee of nine members with competence to consider inter-state complaints and an obligation on states to submit periodic reports to the Committee. The members of the Committee were to be elected by the International Court of Justice from the list of names proposed by the States Parties.
When, in 1966, the detailed consideration of the measures of implementation of the Covenant began, the attitudes of the various groups of delegations were as follows:

The U.S.S.R. and other East European countries in general held that the establishment of an international organ to investigate complaints of violations of the Covenant by one State Party against another State Party amounted to an interference in the domestic affairs of States and was, therefore, contrary to Article 2(7) of the United Nations Charter.

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Further, these continued to hold that the procedural arrangements of the two Covenants should be identical. Since the Covenant on Economic, Social and Cultural Rights made no provision of implementation machinery and left observance of economic, social and cultural rights to members states, the argument amounted to that there should be no machinery for the Covenant on Civil and Political Rights as well. According to their political philosophy economic and social rights were more fundamental and certainly not less important than civil and political rights.

Afro-Asian groups were not prepared to accept for the Covenant, the obligatory inter-state complaints procedure and the jurisdiction of International Court of Justice.

Few were in favour of inclusion of strong implementation provisions. They held, the effectiveness of the Covenant would lie in the strength of its implementation clauses, and failure to provide for an obligatory international procedure would be a retrograde step. 11

In this situation, it was a group of Afro-Asian delegation 12 which undertook the task to bridge the cleavage between differing viewpoints - those who stood for "national sovereignty" and non-interference" in domestic affairs on the one hand and those who wanted effective international measures. They came out with a set of proposals which provided for an intermediate solution which eventually became widely acceptable to all groups and thus to the whole of the General Assembly. 13

11 Ibid, Lady Gaitskell (United Kingdom), 1415th mtg., 7 November 1966, para 25.

12 India, Iran, Libya, Nigeria, Pakistan, Senegal, Sudan, The United Arab Republic and Upper Volta.

The political philosophy and the legal considerations on which the arrangements proposed by the Afro-Asian delegations were based was summarized by a member of Indian delegation in the following terms:

It would be most unrealistic to provide by a stroke of the pen not only for the receipt of reports from states but also for the admission of complaints between states and petitions by individuals against their own states. A cautious approach was called for, involving step-by-step progress. His delegation saw four stages in the implementation of human rights so far as international arrangements were concerned: (1) The creation of inter-national machinery; (2) The establishment of a reporting system; (3) Provision for state-to-state complaints and conciliation machinery; and (4) establishment of an inter-national authority to receive and act on complaints by individuals against their own and other states. In the opinion of his delegation the time was ripe for only the first two stages. (14)

Thus, keeping in consideration the above views as well as suggestions extended by different members states, the proposed implementation machinery was considerably revised by the Third Committee which was finally adopted by the General Assembly during the same session (1966). (15)

The machinery as revised and adopted by the General Assembly in 1966, is discussed and analysed in detail in the chapters that follow.

14 GAOR, 21st session, 3rd Committee Summary Records, 1416th mtg., 8 November 1966, para 1.

15 See General Assembly Resolution 2200 A(XXI), 16 December 1966.