CHAPTER-1

1.1.1 INTRODUCTION

1.2 Research Process

In every living creature, whether social or animal, nature has implanted enough sense of security and protection of their health. The human beings are endowed with special intelligence, so they can take better care of their health (body as well as mind). Good health is the first priority for everybody. Health means physical well being or freedom from disease. It is a state of total physical, mental and social well being. A healthy person can realise his full potential and prepare himself with better immunity, preventing him from many illness. Everybody has the fundamental right to life, and that is from womb to tomb, throughout his/her life, which includes medical care and assistance. [See Article 21 of the Constitution of India]

1.2.1 Pilot Study

Before starting the research the scholar has studied below mentioned subjects and conducted surveys for getting the appropriate direction in the field of research to be conducted.
Evolution and development of systems of health care - various medical professions.
Rights and duties of medical practitioners- Doctors
Rights and expectations of patients
Relations between doctors and patients
Medical negligence
Decisions of the Supreme Court and High Courts
Alma Ata Declaration, 1978(Health for All)
Study of the legal proceedings pending in the various Courts relating to health care and medical profession. Survey of hospitals, interviews with Doctors, nurses, patients and their family.

**The Laws studied were as under:**

The Indian Constitution;
The Law of torts;
The Indian Contract Act, 1872;
The Indian Penal Code, 1860;
The Indian Evidence Act, 1872;
The Consumer Protection Act, 1986;
The Transplantation of Human Organs Act, 1994;
The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954;
The Medical Termination of Pregnancy Act, 1974;
The Pre-natal Diagnostics Techniques Act, 1994;
The Indian Medical Council Act, 1956;
The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002;

### 1.2.2 Origin of the Research Problem

Today everybody wants to achieve the highest peak of success.
The dreams of everybody would not translate into reality.
He has forgotten his own basic interest, while running after achieving success and happiness in life and damaged considerably his health.

Poverty, starvation, unemployment, poor residential accommodations, environmental pollutions etc., are the additional factors which adversely affect the health of a person.
As against this, the Doctors are forgetting their duties and liabilities due to severe desire of making money and accumulate wealth as early as possible. Services to the mankind have become a distant goal for the medical profession.

A covetous man never thinks he has enough. Rapacity is the off spring of avarice.
Moreover, incidences of negligence, even criminal negligence towards their duties are becoming routine phenomena of medical practice.
Main problems relating to the Health Care

Non-availability of qualified Doctors in enough number

Non-availability of well equipped laboratories with modern technology of investigation.

Hospitals are not well equipped. Generally rooms are small, not properly ventilated, accommodations found very congested, sanitation facility found poor. In addition to this the Para medical staffs are unqualified, not properly trained, behaviour with patients and their family is also rude.

Charges of treatment, investigations, and prices of drugs are increasing like anything.

The poor people cannot afford the medical treatment particularly of private hospitals and dispensaries. People living in small villages are still devoid of medical treatment. Adulterated and expiry dated drugs are being used. No precautionary measures are being taken against the drugs of reacting nature. Patients are being experimented. Illegal tests, abortions, transplantations of human organs, unnecessary operations have become a routine course of medical profession.

Administration and implementation of laws are very poor.

Medical practitioners are escaping from observing their medical ethics.

Medical council has turned its eyes, not taking enough steps against their peer members. Corruption is also flourishing.

Patients are not fully aware of their rights. Doctors are exploiting the situation.

Doctors are transgressing their limits. Authority is there but control is poor.

Govt. frames the policies but benefits and beneficiaries remain distant neighbour.

1.2.3 Objectives of Research

To identify the challenges emerged in this area and to study the causes and effects.

To collect the information regarding state of health care and medical profession and to evaluate the same with reference to human rights

To study the Doctor – patient relationship

To evaluate Law, Medical Profession and human rights inter-relationship.

To study the legal problems emerged in the area of Medical Profession and to find out the causes and effects.

To identify the shortcomings in Laws concerning Medical Profession
To study and evaluate implementation of medical ethics
To collect the data of medical negligence and to evaluate the same
To study the principles of liability established by the laws and the courts
To study the state of right to privacy of the patients
To study the state of privileged communications between doctors and patient
To study the decisions of the Supreme Court and High Courts and to suggest necessary amendments in laws concerning medical profession

1.2.4 Hypothesis

Less expenditure in health care is one of the biggest impediments for maintenance of good health.
Ignorance, negligence and poor state of health care invites many types of illness.
Any type of illness reduces efficiency and potentiality of a person.
Lack of doctors, nurses, drugs and other facilities frustrate patients and their family.
Speedy morale degradation in medical profession looses trust of the patients.
Strong desire for accumulation of money and wealth has made commercialization of medical profession.
Pre-natal tests increase killing of female foetus, which creates imbalance in men-women ratio in society.
Unemployment, poverty, starvation, helplessness compel poor persons to sale most valuable organs of their body.
Inaction and omission in implementation of laws and ethics encourage illegal activities and increase crime rate in this profession also.
Doctors exploit the helpless situations of patients.
Morale degradation invites gender atrocity against women.
Patients’ ignorance of their rights leads to violation of the same;
Increasing number of cases in courts of law indicates something wrong is there.
1.2.5 Method of Research

Doctrino-Empirical

Doctrinal part consists critical study of laws concerning medical profession, text, journals, magazines, decisions of the Supreme Court and High Courts; complaints filed by the patients and their family before the courts of law;

Non-doctrinal part consists personal observation, survey, and information through questionnaire.

1.2.6 Design of Research

Survey Design

Entire research plan is divided into four stages:

First stage –
(i) collection of primary data through sample survey by means of interview schedule, interaction, discussion with doctors, patients, family members of patients, Para-medical staffs, advocates etc., and personal observation;
(ii) Collection of secondary data from books, journals, magazines, news papers, judgments of the courts;

Second stage - in-depth study of collected relevant data;

Third stage - compilation, classification, analysis and interpretation of the collected data; and testing them with hypothesis;

Last stage - research report writing.

1.2.7 Significance of study

Study is of the national importance
- Development of the nation without development of its citizen is meaningless.
- Healthy persons are the wealth of a nation. Health means physical and mental well being or freedom from disease. Health is the greatest blessing.

Study is of public/social importance
- Peace and order is an important ingredient for the survival of the society.
- Only healthy persons can do this, because they can think properly and act wisely.
- Physically and mentally healthy persons do not involve themselves in criminal or illegal activities.

**Study is of an individual importance**
- Happiness in life can be experienced through good health only.
- Health is the first priority of an individual.
- Right to life including health care and medical assistance is fundamental right under the Indian Constitutional Law.

- The physical, biological, psychological and spiritual component of human being led to the evolution and development of various methods and forms of treatments, viz., Ayurved, Siddha System, Unani Tibb, Yoga, Homeopathy, Naturopathy, Reiki, Acupuncture, Acupressure, Magnetic Therapy, Aroma Therapy, Emchi, Hypnosis or Mesmerism, Allopathy, etc. Medical profession plays an important role in maintenance of good health. It is a boon to the human species.

**This is an inter-disciplinary study**
Health care, medical profession, and laws are inter-related, they are passing through the critical situation, so the critical inquiry in this area is the need of an hour.
Law cannot make an ill person healthy or cure the disease or reduce suffering or remove the ailments of the individual, but it can only regulate the procedures and the facilities for health care.
Law can take care of the institutions and personnel engaged in health care so that they function with maximum efficiency. It can remove the impediments to health care by providing legal provisions.

**Study has new dimension with new mission and vision.**
**Such type of study is not conducted in past.**

**1.2.8 Utility of Research**
Health care is more important for over all development of any person and this is the basic philosophy of medical profession;
Laws are there to regulate this profession with reference to health care; Present research will explore the state of affairs prevailing in the field of medical profession and administration of law and justice; It will provide the information regarding the shortcoming in the provisions of laws, problems in implementation, alteration and amendments where require, formation of policy in the area of public health care, observance of professional ethics by the medical practitioner; Health care, medical profession and law are the vital and important organs of the society. Present research will be useful in putting all the above organs on the right track and indirectly serve the society as a whole.

1.2.9 Limitations of research

Doctors and Para medical staff, hospital and small dispensaries, advocates and judiciary, government and bureaucrats all are directly or indirectly connected with the health care.
Census survey of all the above is necessary, but not possible. Sample survey is only the way out and it has its own limitations. Rajkot District is the geographical limit of survey, it consists enough samples. Who can represent the entire mass to be studied. Time and money are other limitations. Reliability of the information may be doubted because of above limitations. It will also affect the conclusion to be drawn.

1.3 Human Rights

Concept of human rights is a result of protest against dictatorship and poses a struggle against the totalitarian power of the State. It denotes all the rights which are inherent in our nature and without which we cannot live as a human being. Human rights are moral principles or norms that describe certain standards of human behavior, and are regularly protected as legal rights in national and international law. They are commonly understood as inalienable fundamental rights "to which a person is
inherently entitled simply because she or he is a human being,” and which are “inherent in all human beings” regardless of their nation, location, language, religion, ethnic origin or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone. They require empathy and the rule of law and impose an obligation on persons to respect the human rights of others. They should not be taken away except as a result of due process based on specific circumstances, and require freedom from unlawful imprisonment, torture, and execution.¹

The doctrine of human rights has been highly influential within international law, global and regional institutions. Actions by states and non-governmental organizations form a basis of public policy worldwide. The idea of human rights suggests that "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights." The strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and justifications of human rights to this day. The precise meaning of the term right is controversial and is the subject of continued philosophical debate; while there is consensus that human rights encompasses a wide variety of rights such as the right to a fair trial, protection against enslavement, prohibition of genocide, free speech,² or a right to education, there is disagreement about which of these particular rights should be included within the general framework of human rights; some thinkers suggest that human rights should be a minimum requirement to avoid the worst-case abuses, while others see it as a higher standard.

### 1.3.1 Historical Perspective

Many of the basic ideas that animated the human rights movement developed in the aftermath of the Second World War and the atrocities of The Holocaust, culminating in the adoption of the *Universal Declaration of Human Rights* in Paris by the United

¹ Merriam-Webster dictionary, Retrieved Aug. 14, 2014, "rights (as freedom from unlawful imprisonment, torture, and execution) regarded as belonging fundamentally to all persons"

² Macmillan Dictionary, human rights - definition, Retrieved Aug. 14, 2014, "the rights that everyone should have in a society, including the right to express opinions about the government or to have protection from harm"
Nations General Assembly in 1948. Ancient peoples did not have the same modern-day conception of universal human rights. The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval natural law tradition that became prominent during the Enlightenment with such philosophers as John Locke, Francis Hutcheson, and Jean-Jacques Burlamaqui, and which featured prominently in the political discourse of the American Revolution and the French Revolution. From this foundation, the modern human rights arguments emerged over the latter half of the twentieth century, possibly as a reaction to slavery, torture, genocide, and war crimes, as a realization of inherent human vulnerability and as being a precondition for the possibility of a just society. 

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

—1st sentence of the Preamble to the Universal Declaration of Human Rights

All human beings are born free and equal in dignity and rights.

—Article 1 of the United Nations Universal Declaration of Human Rights (UDHR)

Although ideas of rights and liberty have existed in some form for much of human history, there is agreement that the earlier conceptions do not closely resemble the modern conceptions of human rights. According to Jack Donnelly, in the ancient world, "traditional societies typically have had elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternative to, rather than different formulations of, human rights". The history of human rights can be traced to past documents, particularly the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration of the Rights of Man and of the Citizen (1789), and the Bill of Rights in the United States Constitution (1791). The modern sense of human rights can be traced to Renaissance Europe and the Protestant Reformation, alongside the disappearance of the feudal authoritarianism and religious conservativism that dominated the Middle Ages. One theory is that human rights were developed during the early Modern period, alongside the European secularization of Judeo-Christian ethics. The most commonly held view is that the concept of human rights evolved in the West, and that while earlier cultures had important ethical concepts, they generally
lacked a concept of human rights. For example, McIntyre argues there is no word for "right" in any language before 1400. Medieval charters of liberty such as the English Magna Karta were not charters of human rights; rather they were the foundation \(^3\) and constituted a form of limited political and legal agreement to address specific political circumstances, in the case of Magna Karta later being recognised in the course of early modern debates about rights. One of the oldest records of human rights is the statute of Kalisz (1264), giving privileges to the Jewish minority in the Kingdom of Poland such as protection from discrimination and hate speech. \(^4\) Samuel Moyn suggests that the concept of human rights is intertwined with the modern sense of citizenship, which did not emerge until the past few hundred years.

1.3.2 (a) 16th century

The earliest conceptualization of human rights is credited to ideas about natural rights emanating from natural law. In particular, the issue of universal rights was introduced by the examination of extending rights to indigenous peoples by Spanish clerics, such as Francisco de Vitoria and Bartolomé de Las Casas. In the Valladolid debate, Juan Ginés de Sepúlveda, who maintained an Aristotelian view of humanity as divided into classes of different worth, argued with Las Casas, who argued in favor of equal rights to freedom from slavery for all humans regardless of race or religion.

(b) 17-18th-century English philosopher John Locke discussed natural rights in his work, identifying them as being "life, liberty, and estate (property)", and argued that such fundamental rights could not be surrendered in the social contract. In Britain in 1689, the English Bill of Rights and the Scottish Claim of Right each made illegal a range of oppressive governmental actions. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776 encoded into law a number of fundamental civil rights and civil freedoms.

\(^3\) Danny Danziger & John Gillingham, "1215: The Year of Magna Karta"(2004 paperback edition) p278

\(^4\) Isaac Lewin, The Jewish community in Poland, Philosophical Library, the University of Michigan, 1985 p.19
We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness.—United States Declaration of Independence, 1776

These were followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and G.W.F. Hegel during the 18th and 19th centuries. The term *human rights* probably came into use sometime between Paine's *The Rights of Man* and William Lloyd Garrison's 1831 writings in *The Liberator*, in which he stated that he was trying to enlist his readers in "the great cause of human rights". Although, the term had been used by at least one author as early as 1742.

1.3.3 (c) 19th century

In the 19th century, human rights became a central concern over the issue of slavery. A number of reformers, notably British Member of Parliament William Wilberforce, worked towards the abolition of the slave trade and abolition of slavery. This was achieved across the British Empire by the Slave Trade Act 1807 and the Slavery Abolition Act 1833. In the United States, all the northern states had abolished the institution of slavery between 1777 and 1804, although southern states clung tightly to the "peculiar institution". Conflict and debates over the expansion of slavery to new territories constituted one of the reasons for the southern states' secession and the American Civil War. During the reconstruction period immediately following the war, several amendments to the United States Constitution were made. These included the 13th amendment, banning slavery, the 14th amendment, assuring full citizenship and civil rights to all people born in the United States, and the 15th amendment, guaranteeing African Americans the right to vote. In Russia, the reformer Tsar Alexander II ended serfdom in 1861, although the freed serfs often faced restrictions of their mobility within the nation.

Many groups and movements have achieved profound social changes over the course of the 20th century in the name of human rights. In Europe and North America, labour unions brought about laws granting workers the right to strike, establishing minimum work conditions and forbidding or regulating child labor. The women's rights movement succeeded in gaining for many women the right to vote. National liberation
movements in many countries succeeded in driving out colonial powers. One of the most influential was Mahatma Gandhi's movement to free his native India from British rule. Movements by long-oppressed racial and religious minorities succeeded in many parts of the world, among them the African American Civil Rights Movement, and more recent diverse identity politics movements, on behalf of women and minorities in the United States.

The establishment of the International Committee of the Red Cross, the 1864 Lieber Code and the first of the Geneva Conventions in 1864 laid the foundations of International humanitarian law, to be further developed following the two World Wars.

1.3.4 (d) 20th century

The World Wars, and the huge losses of life and gross abuses of human rights that took place during them, were a driving force behind the development of modern human rights instruments. The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiation and diplomacy, and improving global welfare. Enshrined in its charter was a mandate to promote many of the rights later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied Powers agreed to create a new body to supplant the League's role; this was to be the United Nations. The United Nations has played an important role in international human-rights law since its creation. Following the World Wars, the United Nations and its members developed much of the discourse and the bodies of law that now make up international humanitarian law and international human rights law. Analyst Belinda Cooper argued that human rights organizations flourished in the 1990s, possibly as a result of the dissolution of the western and eastern Cold War blocs. Stefan-Ludwig Hoffmann argues that human rights became more widely emphasized in the latter half of the twentieth century because it "provided a language for political claim making and counter-claims, liberal-democratic, but also socialist and post colonialist."
1.3.5 Philosophy of Human Rights

The philosophy of human rights attempts to examine the underlying basis of the concept of human rights and critically looks at its content and justification. Several theoretical approaches have been advanced to explain how and why human rights have become a part of social expectations.

One of the oldest Western philosophies of human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Other theories hold that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution (associated with Hume). Human rights are also described as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage (as in Rawls) – a social contract. The two theories that dominate contemporary human rights discussion are the interest theory and the will theory. Interest theory argues that the principal function of human rights is to protect and promote certain essential human interests, while will theory attempts to establish the validity of human rights based on the unique human capacity for freedom.

1.3.6 Criticism

The claims made by human rights to universality have led to criticism. Philosophers who have criticized the concept of human rights include Jeremy Bentham, Edmund Burke, Friedrich Nietzsche and Karl Marx. Political philosophy professor Charles Blatberg argues that discussion of human rights, being abstract, demotivates people from upholding the values that rights are meant to affirm. The Internet Encyclopedia of Philosophy gives particular attention to two types of criticisms: the one questioning universality of human rights and the one denying them objective ground. Alain Pellet, an international law scholar, criticizes "human rightism" approach as denying the principle of sovereignty and claiming a special place for human rights among the branches of international law; Alain de Benoist questions human rights premises of human equality. David Kennedy had listed pragmatic worries and polemical charges concerning human rights in 2002 in Harvard Human Rights Journal.
1.3.7 Classification

Human rights can be classified and organized in a number of different ways. At an international level the most common categorisation of human rights has been to split them into civil and political rights, and economic, social and cultural rights.

Civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.3.8 Indivisibility

The UDHR included economic, social and cultural rights and civil and political rights because it was based on the principle that the different rights could only successfully exist in combination. The ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his social, economic and cultural rights.—International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, 1966

This is held to be true because without civil and political rights the public cannot assert their economic, social and cultural rights. Similarly, without livelihoods and a working society, the public cannot assert or make use of civil or political rights (known as the full belly thesis).

The indivisibility and interdependence of all human rights has been confirmed by the 1993 Vienna Declaration and Programme of Action: All human rights are universal, indivisible and interdependent and related. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.—Vienna Declaration and Programme of Action, World Conference on Human Rights, 1993. This statement was again endorsed at the 2005 World Summit in New York (paragraph 121).

Although accepted by the signatories to the UDHR, most do not in practice give equal weight to the different types of rights. Some Western cultures have often given priority to civil and political rights, sometimes at the expense of economic and social
rights such as the right to work, to education, health and housing. Similarly the ex Soviet bloc countries and Asian countries have tended to give priority to economic, social and cultural rights, but have often failed to provide civil and political rights.

1.3.9 Categorization

Opponents of the indivisibility of human rights argue that economic, social and cultural rights are fundamentally different from civil and political rights and require completely different approaches. Economic, social and cultural rights are argued to be:

- aspirations or goals, as opposed to real 'legal' rights
- ideologically divisive/political, meaning that there is no consensus on what should and shouldn't be provided as a right
- non-justiciable, meaning that their provision, or the breach of them, cannot be judged in a court of law
- positive, meaning that they require active provision of entitlements by the state (as opposed to the state being required only to prevent the breach of rights)
- progressive, meaning that they will take significant time to implement
- resource-intensive, meaning that they are expensive and difficult to provide
- socialist, as opposed to capitalist
- vague, meaning they cannot be quantitatively measured, and whether they are adequately provided or not is difficult to judge

Similarly civil and political rights are categorized as:

- capitalist
- cost-free
- immediate, meaning they can be immediately provided if the state decides to
- justiciable

1.3.10 Negative, meaning the state can protect them simply by taking no action

- non-ideological/non-political
- precise, meaning their provision is easy to judge and measure
- real 'legal' rights
Olivia Ball and Paul Gready argue that for both civil and political rights and economic, social and cultural rights, it is easy to find examples which do not fit into the above categorisation. Among several others, they highlight the fact that maintaining a judicial system, a fundamental requirement of the civil right to due process before the law and other rights relating to judicial process, is positive, resource-intensive, progressive and vague, while the social right to housing is precise, justiciable and can be a real 'legal' right.

1.3.11 Three generations

Another categorization, offered by Karel Vasak is that there are three generations of human rights: first-generation civil and political rights (right to life and political participation), second-generation economic, social and cultural rights (right to subsistence) and third-generation solidarity rights (right to peace, right to clean environment). Out of these generations, the third generation is the most debated and lacks both legal and political recognition. This categorisation is at odds with the indivisibility of rights, as it implicitly states that some rights can exist without others. Prioritisation of rights for pragmatic reasons is however a widely accepted necessity. Human rights expert Philip Alston argues: If every possible human rights element is deemed to be essential or necessary, then nothing will be treated as though it is truly important.

He, and others, urge caution with prioritisation of rights:

[T]he call for prioritizing is not to suggest that any obvious violations of rights can be ignored.—Philip Alston

Priorities, where necessary, should adhere to core concepts (such as reasonable attempts at progressive realization) and principles (such as non-discrimination, equality and participation.—Olivia Ball, Paul Gready

Some human rights are said to be "inalienable rights". The term inalienable rights (or unalienable rights) refer to "a set of human rights that are fundamental, are not awarded by human power, and cannot be surrendered."

1.3.12 International protection and promotion

In the aftermath of the atrocities of World War II, there was increased concern for the social and legal protection of human rights as fundamental freedoms. The foundation
of the United Nations and the provisions of the United Nations Charter provided a basis for a comprehensive system of international law and practice for the protection of human rights. Since then, international human rights law has been characterized by a linked system of conventions, treaties, organisations, and political bodies, rather than any single entity or set of laws. However, analyst Pierre Leval suggested that respect for fundamental human rights in the world today is "dismal" within some nations:5

Despotic regimes murder, mutilate, and rape civilian populations and arbitrarily imprison and torture political opponents. Human traffickers, almost invariably operating with the protection of corrupt local officials and police, enslave children and young women in the sex trade. So long as the regimes that sponsor and protect these criminals remain in power, their crimes go unrecognized.

1.3.13 United Nations Charter

The provisions of the United Nations Charter provided a basis for the development of international human rights protection. The preamble of the charter provides that the members "reaffirm faith in fundamental human rights, in the equal rights of men and women" and Article 1(3) of the United Nations charter states that one of the purposes of the UN is: "to achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". Article 55 provides that:

The United Nations shall promote:

a) Higher standards of living, full employment, and conditions of economic and social progress and development;

b) Solutions of international economic, social, health, and related problems;

c) International cultural and educational cooperation;

d) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

5 Pierre N. Leval in *Foreign Affairs*, 2013
Of particular importance is Article 56 of the charter: "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55." This is a binding treaty provision applicable to both the Organisation and its members and has been taken to constitute a legal obligation for the members of the United Nations. Overall, the references to human rights in the Charter are general and vague. The Charter does not contain specific legal rights, nor does it mandate any enforcement procedures to protect these rights. Despite this, the significance of the espousal of human rights within the UN charter must not be understated. The importance of human rights on the global stage can be traced to the importance of human rights within the United Nations framework and the UN Charter can be seen as the starting point for the development of a broad array of declarations, treaties, implementation and enforcement mechanisms, UN organs, committees and reports on the protection of human rights. The rights espoused in the UN charter would be codified and defined in the International Bill of Human Rights, composing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

1.3.14 Universal Declaration of Human Rights

It is not a treaty... [In the future, it] may well become the international Magna Carta." The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948, partly in response to the atrocities of World War II. It is generally viewed as the preeminent statement of international rights and has been identified as being a culmination of centuries of thinking along both secular and religious lines. Although the UDHR was a non-binding resolution, it is now considered by some to have acquired the force of international customary law which may be invoked in appropriate circumstances by national and other judiciaries. The UDHR urges member nations to promote a number of human, civil, economic and social rights, asserting these rights as part of the "foundation of freedom, justice and peace in the world." The declaration was the first international legal effort to limit the

---

6 Eleanor Roosevelt with the Spanish text of the Universal Declaration in 1949
behaviour of states and press upon them duties to their citizens following the model of the rights-duty duality.

...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.—Preamble to the Universal Declaration of Human Rights, 1948

The UDHR was framed by members of the Human Rights Commission, with former First Lady Eleanor Roosevelt as Chair, who began to discuss an International Bill of Rights in 1947. The members of the Commission did not immediately agree on the form of such a bill of rights, and whether, or how, it should be enforced. The Commission proceeded to frame the UDHR and accompanying treaties, but the UDHR quickly became the priority. Canadian law professor John Humphrey and French lawyer René Cassin were responsible for much of the cross-national research and the structure of the document respectively, where the articles of the declaration were interpretative of the general principle of the preamble. The document was structured by Cassin to include the basic principles of dignity, liberty, equality and brotherhood in the first two articles, followed successively by rights pertaining to individuals; rights of individuals in relation to each other and to groups; spiritual, public and political rights; and economic, social and cultural rights. The final three articles place, according to Cassin, rights in the context of limits, duties and the social and political order in which they are to be realized. Humphrey and Cassin intended the rights in the UDHR to be legally enforceable through some means, as is reflected in the third clause of the preamble:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. —Preamble to the Universal Declaration of Human Rights, 1948

Some of the UDHR was researched and written by a committee of international experts on human rights, including representatives from all continents and all major religions, and drawing on consultation with leaders such as Mahatma Gandhi. The inclusion of civil, political, economic, social and cultural rights was predicated on the assumption that all human rights are indivisible and that the different types of rights listed are inextricably linked. This principle was not then opposed by any member states (the declaration was adopted unanimously, Byelorussian SSR, Czechoslovakia,
Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, Yugoslavia). However, this principle was later subject to significant challenges.

The Universal Declaration was bifurcated into treaties, a Covenant on Civil and Political Rights and another on social, economic, and cultural rights, due to questions about the relevance and propriety of economic and social provisions in covenants on human rights. Both covenants begin with the right of people to self-determination and to sovereignty over their natural resources. This debate over whether human rights are more fundamental than economic rights has continued to the present day.

The drafters of the Covenants initially intended only one instrument. The original drafts included only political and civil rights, but economic and social rights were also proposed. The disagreement over which rights were basic human rights resulted in there being two covenants. The debate was whether economic and social rights are aspirational, as contrasted with basic human rights which all people possess purely by being human, because economic and social rights depend on wealth and the availability of resources. In addition, which social and economic rights should be recognised depends on ideology or economic theories, in contrast to basic human rights, which are defined purely by the nature (mental and physical abilities) of human beings. It was debated whether economic rights were appropriate subjects for binding obligations and whether the lack of consensus over such rights would dilute the strength of political-civil rights. There was wide agreement and clear recognition that the means required to enforce or induce compliance with socio-economic undertakings were different from the means required for civil-political rights.

This debate and the desire for the greatest number of signatories to human-rights law led to the two covenants. The Soviet bloc and a number of developing countries had argued for the inclusion of all rights in a so-called Unity Resolution. Both covenants allowed states to derogate some rights. Those in favor of a single treaty could not gain sufficient consensus.

1.3.15 International treaties

Littman, David G. (January 19, 2003). “Human Rights and Human Wrongs” The principal aim of the 1948 Universal Declaration of Human Rights (UDHR) was to create a framework for a universal code based on mutual consent. The early years of the United Nations were overshadowed by the division between the democratic and communist conceptions of human rights, although neither side called into question the concept of universality. The debate centered on which “rights” — political, economic, and social — were to be included among the Universal Instruments.
In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the United Nations, between them making the rights contained in the UDHR binding on all states that have signed this treaty, creating human-rights law. Since then numerous other treaties (pieces of legislation) have been offered at the international level. They are generally known as human rights instruments. Some of the most significant, referred to (with ICCPR and ICESCR) as "the seven core treaties", are:

6) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW or more often MWC) (adopted 1990, entry into force: 2003)

1.3.16 Customary international law

In addition to protection by international treaties, customary international law may protect some human rights, such as the prohibition of torture, genocide and slavery and the principle of non-discrimination.

1.3.17 International humanitarian law

The Geneva Conventions came into being between 1864 and 1949 as a result of efforts by Henry Dunant, the founder of the International Committee of the Red Cross. The conventions safeguard the human rights of individuals involved in armed conflict, and build on the Hague Conventions of 1899 and 1907, the international
community's first attempt to formalize the laws of war and war crimes in the nascent body of secular international law. The conventions were revised as a result of World War II and readopted by the international community in 1949.

Under the mandate of the UN charter, and the multilateral UN human rights treaties, the United Nations (UN) as an intergovernmental body seeks to apply international jurisdiction for universal human-rights legislation. Within the UN machinery, human-rights issues are primarily the concern of the United Nations Security Council and the United Nations Human Rights Council, and there are numerous committees within the UN with responsibilities for safeguarding different human-rights treaties. The most senior body of the UN in the sphere of human rights is the Office of the High Commissioner for Human Rights. The United Nations has an international mandate to: achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, gender, language, or religion.—Article 1–3 of the United Nations Charter

1.3.18 Political bodies

(a) Security Council

The United Nations Security Council has the primary responsibility for maintaining international peace and security and is the only body of the UN that can authorize the use of force. It has been criticised for failing to take action to prevent human rights abuses, including the Darfur crisis, the Srebrenica massacre and the Rwandan Genocide.\(^8\) For example, critics blamed the presence of non-democracies on the Security Council for its failure regarding.\(^9\)

On April 28, 2006 the Security Council adopted resolution 1674 that reaffirmed the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and committed the Security Council to action to protect civilians in armed conflict.

\(^9\) Lee Feinstein, *Darfur and beyond: what is needed to prevent mass atrocities* (2007) p. 46
(b) General Assembly

The United Nations General Assembly, under Article 13 of the UN Charter, has the power to initiate studies and make recommendations on human rights issues. Under this provision, the general assembly passed the Universal Declaration of Human Rights in 1948, and since then a wide variety of other human rights instruments. The assembly has several subsidiary organs that deal with specific human rights issues, such as the Special Committee on Decolonisation and the Special Commission against Apartheid (no longer operational). In addition the general assembly has set up a number of subsidiary organs that consider human rights issues in a number of high-profile contexts: such as the UN Council on Namibia, the Special Committee to Investigate Israeli Practices in the Occupied territories and the Committee on the Exercise of the Inalienable rights of the Palestine People.

(c) Human Rights Council

The United Nations Human Rights Council, created at the 2005 World Summit to replace the United Nations Commission on Human Rights, has a mandate to investigate violations of human rights. The Human Rights Council is a subsidiary body of the General Assembly and reports directly to it. It ranks below the Security Council, which is the final authority for the interpretation of the United Nations Charter. Forty-seven of the one hundred ninety-one member states sit on the council, elected by simple majority in a secret ballot of the United Nations General Assembly. Members serve a maximum of six years and may have their membership suspended for gross human rights abuses. The Council is based in Geneva, and meets three times a year; with additional meetings to respond to urgent situations.

Independent experts (rapporteurs) are retained by the Council to investigate alleged human rights abuses and to provide the Council with reports.

The Human Rights Council may request that the Security Council take action when human rights violations occur. This action may be direct actions, may involve sanctions, and the Security Council may also refer cases to the International Criminal Court (ICC) even if the issue being referred is outside the normal jurisdiction of the ICC.
(d) Treaty bodies

In addition to the political bodies whose mandate flows from the UN charter, the UN has set up a number of treaty-based bodies, comprising committees of independent experts who monitor compliance with human rights standards and norms flowing from the core international human rights treaties. They are supported by and are created by the treaty that they monitor. With the exception of the CESCR, which was established under a resolution of the Economic and Social Council to carry out the monitoring functions originally assigned to that body under the Covenant, they are technically autonomous bodies, established by the treaties that they monitor and accountable to the state parties of those treaties - rather than subsidiary to the United Nations. Though in practice they are closely intertwined with the United Nations system and are supported by the UN High Commissioner for Human Rights (UNHCHR) and the UN Center for Human Rights.

The Human Rights Committee promotes participation with the standards of the ICCPR. The eighteen members of the committee express opinions on member countries and make judgments on individual complaints against countries which have ratified an Optional Protocol to the treaty. The judgments, termed "views", are not legally binding.

The Committee on Economic, Social and Cultural Rights [ICESCR] makes general comments on ratifying countries performance. It will have the power to receive complaints against the countries that opted into the Optional Protocol once it has come into force. It is important to note that unlike the other treaty bodies, the economic committee is not an autonomous body responsible to the treaty parties, but directly responsible to the Economic and Social Council and ultimately to the General Assembly. This means that the Economic Committee faces particular difficulties at its disposal only relatively "weak" means of implementation in comparison to other treaty bodies. Particular difficulties noted by commentators include: perceived vagueness of the principles of the treaty, relative lack of legal texts and decisions, ambivalence of many states in addressing economic, social and cultural rights,
comparatively few non-governmental organizations focused on the area and problems with obtaining relevant and precise information.  

The Committee on the Elimination of Racial Discrimination [CERD] conducts regular reviews of countries' performance. It can make judgments on complaints against member states allowing it, but these are not legally binding. It issues warnings to attempt to prevent serious contraventions of the convention.

The Committee on the Elimination of Discrimination against Women [CEDAW] receives states' reports on their performance and comments on them, and can make judgments on complaints against countries which have opted into the 1999 Optional Protocol.

The Committee against Torture [CAT] receives states' reports on their performance every four years and comments on them. Its subcommittee may visit and inspect countries which have opted into the Optional Protocol.

The Committee on the Rights of the Child [CRC] makes comments on reports submitted by states every five years. It does not have the power to receive complaints.

The Committee on Migrant Workers was established in 2004 and monitors the ICRMW and makes comments on reports submitted by states every five years. It will have the power to receive complaints of specific violations only once ten member states allow it.

The Committee on the Rights of Persons with Disabilities was established in 2008 to monitor the Convention on the Rights of Persons with Disabilities. It has the power to receive complaints against the countries which have opted into the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Each treaty body receives secretariat support from the Human Rights Council and Treaties Division of Office of the High Commissioner on Human Rights (OHCHR) in Geneva except CEDAW, which is supported by the Division for the Advancement of Women (DAW). CEDAW formerly held all its sessions at United Nations

---

headquarters in New York but now frequently meets at the United Nations Office in Geneva; the other treaty bodies meet in Geneva. The Human Rights Committee usually holds its March session in New York City.

1.3.19 Regional human rights regimes

International human rights regimes are in several cases "nested" within more comprehensive and overlapping regional agreements. These regional regimes can be seen as relatively independently coherent human rights sub-regimes. Three principal regional human rights instruments can be identified; the African Charter on Human and Peoples' Rights, the American Convention on Human Rights (the Americas) and the European Convention on Human Rights. The European Convention on Human Rights has since 1950 defined and guaranteed human rights and fundamental freedoms in Europe. All 47 member states of the Council of Europe have signed the Convention and are therefore under the jurisdiction of the European Court of Human Rights in Strasbourg.

1.3.20 Human rights promotion

Human rights continue to be promoted around the world through governmental organizations and museums including the Canadian Museum for Human Rights in Winnipeg, Manitoba.

1.3.21 Non-governmental actors

(a) Non-governmental organizations

International non-governmental human rights organizations such as Amnesty International, Human Rights Watch, International Service for Human Rights and FIDH monitor what they see as human rights issues around the world and promote their views on the subject. Human rights organizations have been said to "translate

\footnote{Donnelly 2003, p. 138}
complex international issues into activities to be undertaken by concerned citizens in their own community". Human rights organizations frequently engage in lobbying and advocacy in an effort to convince the United Nations, supranational bodies and national governments to adopt their policies on human rights. Many human-rights organizations have observer status at the various UN bodies tasked with protecting human rights. A new (in 2009) nongovernmental human-rights conference is the Oslo Freedom Forum, a gathering described by The Economist as "on its way to becoming a human-rights equivalent of the Davos economic forum." The same article noted that human-rights advocates are more and more divided amongst themselves over how violations of human rights are to be defined, notably as regards the Middle East. There is criticism of human-rights organizations that use their status but allegedly move away from their stated goals. For example, Gerald M. Steinberg, an Israel-based academic, maintains that NGOs take advantage of a "halo effect" and are "given the status of impartial moral watchdogs" by governments and the media. Such critics claim that this may be seen at various governmental levels, including when human-rights groups testify before investigation committees.

1.3.22 (b) Human rights defenders

A human rights defender is someone who, individually or with others, acts to promote or protect human rights. Human rights defenders are those men and women who act peacefully for the promotion and protection of those rights, and most of this activity happens within a nation as opposed to internationally.

1.3.23 (c) Corporations

Multinational companies play an increasingly large role in the world, and have been responsible for numerous human rights abuses. Although the legal and moral environment surrounding the actions of governments is reasonably well developed, that surrounding multinational companies is both controversial and ill-defined. Multinational companies' primary responsibility is to their shareholders, not to those affected by their actions. Such companies may be larger than the economies of some of the states within which they operate, and can wield significant economic and political power. No international treaties exist to specifically cover the behavior of companies with regard to human rights, and national legislation is very variable. Jean
Ziegler, Special Rapporteur of the UN Commission on Human Rights on the right to food stated in a report in 2003:

[T]he growing power of transnational corporations and their extension of power through privatization, deregulation and the rolling back of the State also mean that it is now time to develop binding legal norms that hold corporations to human rights standards and circumscribe potential abuses of their position of power.—Jean Ziegler

In August 2003 the Human Rights Commission’s Sub-Commission on the Promotion and Protection of Human Rights produced draft *Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*. These were considered by the Human Rights Commission in 2004, but have no binding status on corporations and are not monitored.

### 1.3.24 Violations

**Human rights violations** occur when actions by state (or non-state) actor’s abuse, ignore, or deny basic human rights (including civil, political, cultural, social, and economic rights). Furthermore, violations of human rights can occur when any state or non-state actor breaches any part of the UDHR treaty or other international human rights or humanitarian law. In regard to human rights violations of United Nations laws, Article 39 of the United Nations Charter designates the UN Security Council (or an appointed authority) as the only tribunal that may determine UN human rights violations.

Human rights abuses are monitored by United Nations committees, national institutions and governments and by many independent non-governmental organizations, such as Amnesty International, International Federation of Human Rights, Human Rights Watch, World Organisation Against Torture, Freedom House, International Freedom of Expression Exchange and Anti-Slavery International. These organisations collect evidence and documentation of alleged human rights abuses and apply pressure to enforce human rights laws.

Wars of aggression, war crimes and crimes against humanity, including genocide, are breaches of International humanitarian law and represent the most serious of human rights violations.

In efforts to eliminate violations of human rights, building awareness and protesting inhumane treatment has often led to calls for action and sometimes improved
conditions. The UN Security Council has interceded with peace keeping forces, and other states and treaties (NATO) have intervened in situations to protect human rights.

1.3.25 Substantive rights

(a) Right to life
Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. —Article 6.1 of the International Covenant on Civil and Political Rights
The right to life is the essential right that a human being has the right not to be killed by another human being. The concept of a right to life is central to debates on the issues of abortion, capital punishment, euthanasia, self defense and war. According to many human rights activists, the death penalty violates this right. The United Nations has called on states retaining the death penalty to establish a moratorium on capital punishment with a view to its abolition. States which do not do so face considerable moral and political pressure.

(b) Freedom from torture
Throughout history, torture has been used as a method of political re-education, interrogation, punishment, and coercion. In addition to state-sponsored torture, individuals or groups may be motivated to inflict torture on others for similar reasons to those of a state; however, the motive for torture can also be for the sadistic gratification of the torturer, as in the Moors murders.
Torture is prohibited under international law and the domestic laws of most countries in the 21st century. It is considered to be a violation of human rights, and is declared to be unacceptable by Article 5 of the UN Universal Declaration of Human Rights. Signatories of the Geneva Conventions of 1949 and the Additional Protocols I and II of 8 June 1977 officially agree not to torture captured persons in armed conflicts, whether international or internal. Torture is also prohibited by the United Nations Convention against Torture, which has been ratified by 155 countries. National and international legal prohibitions on torture derive from a consensus that torture and similar ill-treatment are immoral, as well as impractical. Despite these
international conventions, organizations that monitor abuses of human rights (e.g. Amnesty International, the International Rehabilitation Council for Torture Victims) report widespread use condoned by states in many regions of the world. Amnesty International estimates that at least 81 world governments currently practice torture, some of them openly.

(c) **Freedom from slavery**

Freedom from slavery is internationally recognized as a human right. Article 4 of the Universal Declaration of Human Rights states:

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Despite this, the number of slaves today is higher than at any point in history, remaining as high as 12 million to 27 million. Most are debt slaves, largely in South Asia, who are under debt bondage incurred by lenders, sometimes even for generations. Human trafficking is primarily for prostituting women and children into sex industries.

Groups such as the American Anti-Slavery Group, Anti-Slavery International, Free the Slaves, the Anti-Slavery Society, and the Norwegian Anti-Slavery Society continue to campaign to rid the world of slavery.

(d) **Right to a fair trial**

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The right to a fair trial has been defined in numerous regional and international human rights instruments. It is one of the most extensive human rights and all international human rights instruments enshrine it in more than one article. The right to a fair trial is one of the most litigated human rights and substantial case law has been established on the interpretation of this human right. Despite variations in wording and placement of the various fair trial rights, international human rights instrument define

---

14 Ibid, p. 110
the right to a fair trial in broadly the same terms. The aim of the right is to ensure the proper administration of justice. As a minimum the right to fair trial includes the following fair trial rights in civil and criminal proceedings:

- the right to be heard by a competent, independent and impartial tribunal
- the right to a public hearing
- the right to be heard within a reasonable time
- the right to counsel
- the right to interpretation

(e) Freedom of speech

Freedom of speech is the freedom to speak freely without censorship. The term freedom of expression is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In practice, the right to freedom of speech is not absolute in any country and the right is commonly subject to limitations, such as on libel, slander, obscenity, incitement to commit a crime, etc. The right to freedom of expression is recognized as a human right under Article 19 of the Universal Declaration of Human Rights and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that "everyone shall have the right to hold opinions without interference" and "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

(f) Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance —Article 18 of the International Covenant on Civil and Political Rights

Freedom of thought, conscience and religion are closely related rights that protect the freedom of an individual or community, in public or private, to think and freely hold conscientious beliefs and to manifest religion or belief in teaching, practice, worship, and observance; the concept is generally recognized also to include the freedom to change religion or not to follow any religion. The freedom to leave or discontinue membership in a religion or religious group—in religious terms called "apostasy"—is also a fundamental part of religious freedom, covered by Article 18 of the Universal Declaration of Human Rights.

Human rights groups such as Amnesty International organizes campaigns to protect those arrested and or incarcerated as a prisoner of conscience because of their conscientious beliefs, particularly concerning intellectual, political and artistic freedom of expression and association. In legislation, a conscience clause is a provision in a statute that excuses a health professional from complying with the law (for example legalizing surgical or pharmaceutical abortion) if it is incompatible with religious or conscientious beliefs.

(g) Freedom of movement

Freedom of movement asserts that a citizen of a state in which that citizen is present has the liberty to travel, reside in, and/or work in any part of the state where one pleases within the limits of respect for the liberty and rights of others, and to leave that state and return at any time.

(h) Rights debates

Events and new possibilities can affect existing rights or require new ones. Advances of technology, medicine, and philosophy constantly challenge the status quo of human rights thinking.

(i) Right to keep and bear arms

The right to keep and bear arms for defense is described in the philosophical and political writings of Aristotle, Cicero, John Locke, Machiavelli, the English Whigs and others. In countries with an English common law tradition, a long standing
common law right to keep and bear arms has long been recognized, as pre-existing in common law, prior even to the existence of national constitutions.

1.3.26 (j) Future generations

In 1997 UNESCO adopted the Declaration on the Responsibilities of the Present Generation towards the Future Generation. The Declaration opens with the words:

Mindful of the will of the peoples, set out solemnly in the Charter of the United Nations, to 'save succeeding generations from the scourge of war' and to safeguard the values and principles enshrined in the Universal Declaration of Human Rights, and all other relevant instruments of international law.—Declaration on the Responsibilities of the Present Generation Towards the Future Generation

Article 1 of the declaration states "the present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded" The preamble to the declaration states that "at this point in history, the very existence of humankind and its environment are threatened" and the declaration covers a variety of issues including protection of the environment, the human genome, biodiversity, cultural heritage, peace, development, and education. The preamble recalls that the responsibilities of the present generations towards future generations has been referred to in various international instruments, including the Convention for the Protection of the World Cultural and Natural Heritage (UNESCO 1972), the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity (Rio de Janeiro, 1992), the Rio Declaration on Environment and Development (UN Conference on Environment and Development, 1992), the Vienna Declaration and Programme of Action (World Conference on Human Rights, 1993) and a number of UN General Assembly resolutions relating to the protection of the global climate for present and future generations adopted since 1990.

1.3.27 (k) Sexual orientation and gender identity

Sexual orientation and gender identity rights relate to the expression of sexual orientation and gender identity based on the right to respect for private life and the right not to be discriminated against on the ground of "other status" as defined in various human rights conventions, such as article 17 and 26 in the United Nations
As of 2011, homosexual behaviour is illegal in 76 countries and punishable by execution in seven countries. The criminalization of private, consensual, adult sexual relations, especially in countries where corporal or capital punishment is involved, is one of the primary concerns of LGBT human rights advocates.

Other issues include: government recognition of same-sex relationships, LGBT adoption, sexual orientation and military service, immigration equality, anti-discrimination laws, hate crime laws regarding violence against LGBT people, sodomy laws, anti-lesbianism laws, and equal age of consent for same-sex activity.

A global charter for sexual orientation and gender identity rights has been proposed in the form of the 'Yogyakarta Principles', a set of 29 principles whose authors say they apply International Human Rights Law statutes and precedent to situations relevant to LGBT people's experience. The principles were presented at a United Nations event in New York on November 7, 2007, co-sponsored by Argentina, Brazil and Uruguay.

The principles have been acknowledged with influencing the French proposed UN declaration on sexual orientation and gender identity, which focuses on ending violence, criminalization and capital punishment and does not include dialogue about same-sex marriage or right to start a family. The proposal was supported by 67 of the then 192 member countries of the United Nations, including all EU member states and the United States. An alternative statement opposing the proposal was initiated by Syria and signed by 57 member nations, including all 27 nations of the Arab League as well as Iran and North Korea.

1.3.28 (l) Trade

Although both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights emphasize the importance of a right to work, neither of these documents explicitly mention free trade as a mechanism for ensuring this fundamental right. And yet trade plays a key role in providing jobs.

Some experts argue that trade is inherent to human nature and that when governments inhibit international trade they directly inhibit the right to work and the other indirect benefits, like the right to education, that increased work and investment help accrue.
Others have argued that the ability to trade does not affect everyone equally—often groups like the rural poor, indigenous groups and women are less likely to access the benefits of increased trade.

On the other hand, others think that it is no longer primarily individuals but companies that trade, and therefore it cannot be guaranteed as a human right. Additionally, trying to fit too many concepts under the umbrella of what qualifies as a human right has the potential to dilute their importance. Finally, it is difficult to define a right to trade as either "fair" or "just" in that the current trade regime produces winners and losers but its reform is likely to produce (different) winners and losers.

1.3.29 (m) Water

The right to water has been recognized in a wide range of international documents, including treaties, declarations and other standards. For instance, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) requires State parties to ensure to women the right to “enjoy adequate living conditions, particularly in relation to […] water supply”. The 1989 Convention on the Rights of the Child (CRC) requires States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

The clearest definition of the Human right to water has been issued by the UN Committee on Economic, Social and Cultural Rights. This treaty body interpreting legal obligations of State parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) issued in 2002 a non-binding interpretation affirming that access to water was a condition for the enjoyment of the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of health (see ICESCR Art.11 & 12) and therefore a human right:

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

—United Nations Committee on Economic, Social and Cultural Rights

On July 28, 2010, the United Nations General Assembly declared water and sanitation as human rights. Today all States have at least ratified one human rights convention which explicitly or implicitly recognizes the right, and they all have signed at least one political declaration recognizing this right.
(n) Reproductive rights

Reproductive rights are rights relating to reproduction and reproductive health. The World Health Organization defines reproductive rights as follows:

Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.

—World Health Organization

Reproductive rights were first established as a subset of human rights at the United Nations 1968 International Conference on Human Rights. The sixteenth article of the resulting Proclamation of Teheran states, "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children."

Reproductive rights may include some or all of the following rights: the right to legal or safe abortion, the right to control one's reproductive functions, the right to quality reproductive healthcare, and the right to education and access in order to make reproductive choices free from coercion, discrimination, and violence.

Reproductive rights may also be understood to include education about contraception and sexually transmitted infections, and freedom from coerced sterilization and contraception, protection from gender-based practices such as female genital cutting (FGC) and male genital mutilation (MGM).

1.3.30 Relationship with other topics

(a) The environment

There are two basic conceptions of environmental human rights in the current human rights system. The first is that the right to a healthy or adequate environment is itself a human right (as seen in both Article 24 of the African Charter on Human and Peoples' Rights, and Article 11 of the San Salvador Protocol to the American Convention on Human Rights). The second conception is the idea that environmental human rights can be derived from other human rights, usually – the right to life, the right to health, the right to private family life and the right to property (among many others). This
second theory enjoys much more widespread use in human rights courts around the world, as those rights are contained in many human rights documents.

The onset of various environmental issues, especially climate change, has created potential conflicts between different human rights. Human rights ultimately require a working ecosystem and healthy environment, but the granting of certain rights to individuals may damage these. Such as the conflict between right to decide number of offspring and the common need for a healthy environment, as noted in the tragedy of the commons. In the area of environmental rights, the responsibilities of multinational corporations, so far relatively unaddressed by human rights legislation, is of paramount consideration. Environmental rights revolve largely around the idea of a right to a livable environment both for the present and the future generations.

(b) National security

With the exception of non-violable human rights (international conventions class the right to life, the right to be free from slavery, the right to be free from torture and the right to be free from retroactive application of penal laws as non-derogable), the UN recognises that human rights can be limited or even pushed aside during times of national emergency – although the emergency must be actual, affect the whole population and the threat must be to the very existence of the nation. The declaration of emergency must also be a last resort and a temporary measure. —United Nations.

The Resource

Rights that cannot be derogated for reasons of national security in any circumstances are known as peremptory norms or *jus cogens*. Such United Nations Charter obligations are binding on all states and cannot be modified by treaty. Examples of national security being used to justify human rights violations include the Japanese American internment during World War II, Stalin’s Great Purge, and the modern-day abuses of terror suspects rights by some countries, often in the name of the War on Terror.

1.3.31 Relativism and universalism

Relativists argue that human rights must avoid pushing the values of a single culture at the expense of others. "The White Man's Burden" is seen as an example of the West using the spread of Western culture as a justification for colonization.
Universalists argue that some practices violate the norms of all human cultures. They point out that although Female genital mutilation is prevalent in Africa, no religion supports the practice, and the tradition is in violation of women's rights. The UDHR enshrines universal rights that apply to all humans equally, whichever geographical location, state, race or culture they belong to. However, in academia there is a dispute between scholars that advocate moral relativism and scholars that advocate moral universalism. Relativists do not argue against human rights, but concede that human rights are social constructed and are shaped by cultural and environmental contexts. Universalists argue that human rights have always existed, and apply to all people regardless of culture, race, sex, or religion. More specifically, proponents of cultural relativism argue for acceptance of different cultures, which may have practices conflicting with human rights. Relativists caution that universalism could be used as a form of cultural, economic or political imperialism. The White Man's Burden is used as an example of imperialism and the destruction of local cultures justified by the desire to spread Eurocentric values. In particular, the concept of human rights is often claimed to be fundamentally rooted in a politically liberal outlook which, although generally accepted in Europe, Japan or North America, is not necessarily taken as standard elsewhere. Opponents of relativism argue that some practices exist that violate the norms of all human cultures. A common example is female genital mutilation, which occurs in different cultures in Africa, Asia and South America. It is not mandated by any religion, but has become a tradition in many cultures. It is considered a violation of women's and girl's rights by much of the international community, and is outlawed in some countries. The former Prime Ministers of Singapore, Lee Kuan Yew, and of Malaysia, Mahathir bin Mohamad both claimed in the 1990s that Asian values were significantly different from Western values and included a sense of loyalty and foregoing personal freedoms for the sake of social stability and prosperity, and therefore authoritarian government is more appropriate in Asia than democracy. Lee Kuan Yew argued that:

What Asians value may not necessarily be what Americans or Europeans value. Westerners value the freedoms and liberties of the individual. As an Asian of Chinese

cultural background, my values are for a government which is honest, effective, and efficient.


In response, critics have pointed out that cultural relativism could be used as a justification for authoritarianism. An example is in 1981, when the Iranian representative to the United Nations, Said Rajaie-Khorassani, articulated the position of his country regarding the Universal Declaration of Human Rights by saying that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing the Islamic law. The Asian Values argument was criticized by Mahathir's former deputy: To say that freedom is Western or un Asian is to offend our traditions as well as our forefathers, who gave their lives in the struggle against tyranny and injustices.

—Anwar Ibrahim in his keynote speech to the Asian Press Forum title Media and Society in Asia, December 2, 1994 and by Singapore's opposition leader Chee Soon Juan, who states that it is racist to assert that Asians do not want human rights.

Defenders of moral universalism argue that relativistic arguments neglect the fact that modern human rights are new to all cultures, dating back no further than the UDHR in 1948. They argue that the UDHR was drafted by people from many different cultures and traditions, including a US Roman Catholic, a Chinese Confucian philosopher, a French Zionist and a representative from the Arab League, amongst others, and drew upon advice from thinkers such as Mahatma Gandhi. Michael Ignatieff has argued that cultural relativism is almost exclusively an argument used by those who wield power in cultures which commit human rights abuses, and that those whose human rights are compromised are the powerless. This reflects the fact that the difficulty in judging universalism versus relativism lies in who is claiming to represent a particular culture.

Although the argument between universalism and relativism is far from complete, it is an academic discussion in that all international human rights instruments adhere to the

---

17 Halper, Stefan. The Beijing consensus. p 133
18 Ball & Gready 2006, p. 25
19 Ignatieff 2001, p. 68
principle that human rights are universally applicable. The 2005 World Summit reaffirmed the international community's adherence to this principle:

The universal nature of human rights and freedoms is beyond question.\(^\text{20}\)

The concept of human rights allows mankind the right to live with dignity. Acceptance of human rights necessarily means to give priority to furtherance of the interests of mankind and development of the mental faculty of the human race. Dignity of human being is at the centre of all human rights. Right from birth, a human being desires freedom. But, because of the circumstances economic, social and the political environment human being are prevented from being so to the fullest extent. Hence, human rights help to create a system in which every human being has an opportunity to develop his abilities to the fullest extent. The ultimate aim of every human society or association is to develop a human being. Acceptance of human rights leads society to stability and provides opportunities for development.

\(^{20}\) —2005 World Summit, paragraph 121