Chapter - II

THE INTERNATIONAL BILL OF HUMAN RIGHTS
2.1 Introduction

With the increased attention for human rights and fundamental freedoms, the international human rights discussion takes a wider dimension and is gaining in depth. The modern human rights jurisprudence can be called as post World War II phenomenon. The "monstrous violation" of human rights during the Second World War and the belief that some of these human rights violations could have been prevented if there had been some effective international system for the protection of human rights, formed the basis for inclusion of certain human rights clauses in the United Nations Charter. The events which occurred immediately before and during the Second World War were mainly responsible for inclusion of human rights clauses in the United Nations Charter. This is evident from the very first paragraph of the Preamble of the Charter of United Nations which says "WE THE PEOPLE OF THE UNITED NATIONS determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind." In other words, the human rights provisions of the United Nations Charter reflect the reaction of the international community to the horrors of war and the regimes which unleashed it. In fact, the experience of the Second World War resulted in the widespread conviction that the effective international protection of human rights was an essential condition of international peace and progress. This was evident from the various statements, declarations and proposals made while the war was still being fought. As early as 1941, President Franklin D. Roosevelt, in his famous "Four Freedoms" speech called for "a world founded upon four essential human freedoms". These he identified as (i) freedom of speech and expression, (ii) freedom of every person to worship God in his own way, (iii) freedom from want and (iv) freedom from fear. [1] These fundamental freedoms had a tremendous effect in the framing of the United
Nations Charter. In the Atlantic Charter of 14 August 1941, which was later subscribed to and endorsed by 47 nations, the President of the United States of America and the Prime Minister of the United Kingdom expressed the hope "to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all men in all the lands may live out their lives in freedom from fear and want."

In 1944, the Dumbarton Oaks Conversations took place between the then four super powers, i.e., Union of Soviet Socialist Republics, the United States of America, the United Kingdom and China. This was the first concrete step towards the creation of a general international organization. As a result of these conversations Dumbarton Oaks proposals were drafted which contemplated the establishment of an international organization under the title of "The United Nations" which would, among other things, "facilitate solutions of international economic, social and other, humanitarian problems and promote respect for human rights and fundamental freedoms". These proposals formed the basis of the work of the United Nations Conference on International Organization, which opened in San Francisco on 25 April, 1945. The San Francisco conference added several new human rights clauses to the Dumbarton Oaks Proposals in its preparation of the final version of the Charter. The Charter of the United Nations was signed on 26 June 1945 in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter. The human rights clauses which ultimately found their way into the Charter of the United Nations fell far short of the expectations that Roosevelt's vision and the wartime rhetoric had created. [2]The reason was obvious. The main super powers which played a dominant role in the San Francisco Conference had
human rights problems of their own. For example, the United States had the problem of racial discrimination, whereas United Kingdom had the problem of colonial empire. Nevertheless the United Nations Charter has laid down the foundation of modern international Human Rights Laws.

2.2 U.N Charter and Human Rights

The United Nations Charter refers to human rights in its Preamble and six other articles. In the Preamble to the Charter of the United Nations, the People of the United Nations expressed their determination "to reaffirm faith in fundamental human rights, in the dignity, and worth of human person, in the equal rights of men and women and of nations large and small, and........ "

"To promote social progress and better standards of life in larger freedom."

Thus, the Preamble to the charter in most sonorous terms recognizes the human rights and the dignity and worth of the human being, which were most flagrantly violated during the two World Wars. The Preamble of the United Nations begins with the words, "We the people of the United Nations". These words are neither superfluous nor have crept in the preamble incidentally. They are very meaningful. They indicate the objectives which the framers of the Charter wanted to achieve.

The purposes of the United Nation's are proclaimed in article 1 of the Charter. Article 1(2) provides: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

Article 1(3) further provides: "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, sex, language, or religion”.

Thus, once again we find that the underlined purpose of the United Nations Charter is to promote and encourage human rights and fundamental freedoms. The words "based on respect for the principle of equal rights and self-determination of peoples" in article 1(2) and the words "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" were not in the Dumbarton Oaks Proposals but were introduced in San Francisco. Article 1 puts the promotion of respect for human rights on the same level as the maintenance of international peace and security as a purpose of the United Nations. It is also recognition of the reality that the entire mankind is after all one organic whole and that a denial of human dignity and liberty, anywhere is a threat to peace and security everywhere. The basic obligations of the Organization and its Member States in achieving these purposes are set out in articles 55 and 56 of the United Nations Charter.

Article 55 of the U.N. Charter provides:

With a view to the creation of conditions of stability and wellbeing which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, 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; and international cultural and educational co-operation; and
(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 provides:

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Thus, United Nations undertake to "promote" universal respect for, and observance of human rights and fundamental freedoms for all. Under the Charter of the United Nations the responsibility of "promoting" universal respect for and the observance of human rights and fundamental freedoms is on the General Assembly and the Economic and Social Council. Under Article 56 of the Charter, all Members "pledge" themselves to take joint and separate action for the purpose of Article 55 of the Charter.

The General Assembly is empowered under article 13(1) (b) to initiate studies and make recommendations for the purpose of: "promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

Similar powers are conferred by the Charter of UN on Economic and Social Council under article 62 which provides:

(1) The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General
Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

(2) It may make recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all.

(3) It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

(4) It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence. (Emphasis added) Further with regard to the recommendations it is provided in article 64(1) of the UN Charter that the Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

Article 68 empowers the Economic and Social Council to set up, inter alia, "Commissions" on human rights. It provides: "The Economic and Social Council shall set up Commissions in economic and social fields and for the promotion of human rights, and such other Commissions as may be required for the performance of its functions".

Consequent upon this provision the Economic and Social Council has, inter alia, established the "Commission on Human Rights", the "Commission on the Status of Women" and the "Sub-Commission on Prevention of Discrimination and Protection of Minorities". In Chapter XI relating to declaration regarding non-self-governing territories, articles 73 provides that the "Members of the
United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end secure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their first treatment and their protection against abuses." With regard to the dependent territories, article 76 of the UN Charter provides that one of the basic objectives of the Trusteeship System in accordance with the purposes of the United Nations laid down in article 1 of the Charter shall be:

(a)...

(b)...

(c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language; or religion and to encourage recognition of the interdependence of the peoples of the world.

It may be pointed out here that the Charter of the United Nations though makes reference to "human rights" and "fundamental freedoms" in the preamble and various other provisions, as mentioned above, yet it did not define what is meant by "human rights" and "fundamental freedoms". Moreover, as mentioned earlier, under the Charter the responsibility for promoting the "human rights" and "fundamental freedoms" is assigned to the General Assembly and the Economic and Social Council and their resolutions are not legally binding. This raised some doubts about the importance of mentioning "human rights" and "fundamental freedoms" in the U.N. Charter.
Monley Hudson was of the opinion that "the Charter was limited to setting out a programme of action for the Organization of the United Nations to pursue in which the members are pledged to co-operate. He went to the extent of asserting that "an interpretation construing the relevant provisions of the Charter as imposing upon the members of the United Nations, the Legal obligation to respect human rights and freedoms may act in the direction of disintegrating the Charter. [4] According to Hans Kelon: "The Charter does not impose upon the members a strict Obligation to grant to their subjects, the rights and freedoms mentioned in the Preamble or in the text of the Charter. The language used by the Charter in this respect does not allow the interpretation that the members are under legal Obligations regarding the rights and freedoms of their subjects". [5] On the other hand, the significance of mentioning human rights in the United Nations Charter can be best described in the following words of Lauterpacht: "For its goals, the United Nations programme, is heir to all the great historic movements for men's freedom (including the British, American and French revolutions and the events they set in train to the enduring elements in the tradition of natural law and natural rights and in most of the world's great religions and philosophies, and to the interrelations of simple respect for human dignity and all other individual and community values". [6]

Lauterpacht is of the opinion that since the provisions of the Charter of the human rights figure prominently in the statement of the purposes of the United Nations and it us, the members of the United Nations are under a legal obligation to act in accordance with these purposes. It is their duty to respect and observe fundamental human rights and freedoms. [7] It may be pointed out here that all the members of the United Nations, under article 56 of the Charter "pledge" themselves to take joint and separate action in co-operation
with the Organization for the achievement of purposes set out in article 55 of
the Charter which, _inter alia_, includes universal respect for, and observance of
human rights and fundamental freedoms for all. In a way every member state is
under an obligation to respect the human rights and fundamental freedoms not
only of its own nationals but of all the people. In the view of Ian Brownlie, "as
treaty provisions applicable to the Organization and its members these
prescriptions are of paramount importance. [8] Thus, articles 55 and 56 of the
U.N. Charter bind member States to observe and respect human rights and
fundamental freedom for all. This view is also supported by the interpretation
of these provisions as given by the International Court of Justice. [9]

According to Justice Tanaka, "the repeated references in the Charter to
fundamental rights and freedoms ... presents itself as one of its differences
from the Covenant of the League of Nations, in which the existence of intimate
relationships between peace and respect for human rights were not so keenly
felt as in the Charter of the United Nations. However, the Charter did not go so
far as to give the definition to the fundamental rights and freedoms nor to
provide any machinery of implementation for the protection and guarantee of
these rights and freedoms". He further expressed his view by observing: "From
the provisions of the Charter referring to the human rights and fundamental
freedoms it can be inferred that the legal obligation to respect human rights and
fundamental freedoms is imposed on member States". [10]

It was also argued that article 2(7) of the U.N. Charter prohibits the United
Nations "to intervene in matters which are essentially within the domestic
jurisdiction of any State or shall require the Members to submit such matters to
settlement under the present Charter", and thus reduces the role of the United
Nations in the protection of Human Rights to a minimum. However this view
does not seem to be correct and the question of "domestic jurisdiction" does
not arise in the case of implementation of the provisions of Human Rights Covenants.[11] Human Rights and Fundamental Freedoms have become the subject of a solemn international obligation and a fundamental purpose of the Charter. Thus, they are not any longer a matter which is essentially within the domestic jurisdiction of the members of the United Nations. In the modern world it would be quite absurd to assert that a massive or systematic violation of human rights or fundamental freedoms by the State of its own national is a matter within its exclusive "domestic jurisdiction". Thus, one of the most important consequences of incorporating human rights clauses in the UN Charter was to "internationalize human rights.

According to Buergenthal, the second consequence of having human rights clauses in the U.N. Charter was that "the obligation of the Member States of the U.N. to co-operate with the Organization in the promotion of human rights and fundamental freedoms provided the UN with the requisite legal authority to undertake a massive effort to define and codify these rights. That effort is reflected in the adoption of the International Bill of Human Rights and numerous other human rights instruments in existence today. [12]

Today, if any Member State violates the internationally recognized human rights, it can be said that it is acting contrary to the U.N. Charter. The United Nations has sought to enforce the obligation of the Member States "to promote and encourage respect for human rights and for fundamental freedoms for all", with resolutions calling on specific states to stop such violations and by empowering the UN Commission on Human Rights and its subsidiary bodies to establish procedures to review allegations of such violations.

However, it is important to note that the Charter nowhere grants any right to the individual which he can maintain against an oppressor. Furthermore, the
Statute of the International Court of Justice, which is an integral part of the Charter, expressly provides that only States may be parties in cases before the Court. Nevertheless, as mentioned earlier, violation of the human rights of an individual is no more considered to be domestic affair. Now the protection and promotion of human rights have become an integral part of the modern international law and it has led to the development of a new human rights jurisprudence. At this place it may be relevant to refer "1503 procedure" which enables an individual to complain to the United Nations when his or her case is not covered by a United Nations treaty. In 1970, the Economic and Social Council passed Resolution 1503, which as implemented by the 1971 Resolution of the Sub-Commission, does not establish an individual petition system. Although individuals have standing to file petitions, their cause of action is based on a showing of "a consistent pattern of gross and reliably attested violations". The procedure is thus applicable to large-scale or systematic denials of human rights rather than to violations of one individuals' rights. However, if one or series of individual cases are systematic of the large-scale violations taking place in a particular country, they would be covered under the "1503 procedure". Under the 1503 procedure, it is not necessary that the petitioner himself or herself is the victim of the violation of human rights. It is sufficient that he or she has "direct and reliable knowledge of those violations". Even Non-Governmental Organizations may also submit communications. However, it is necessary for the petitioner to show that domestic remedies have been exhausted unless it appears that such remedies would be ineffective or unreasonably prolonged.

On 13 August, 1971, the Sub-Commission adopted Resolution XXIV/1, which establishes specific procedures for the application of ECOSOC Resolution 1503. The most important aspect of the Resolution is that it provides, in setting
standards and criteria admissibility of the petition which is asunder: "The communication shall be admissible only if ... there an reasonable grounds to believe that they reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in any country, including colonial and, other dependent countries and peoples".

Thus, according to this procedure, whenever any complaint of human rights violation is received by the United Nations, the Sub-Commission is authorized to establish a small working group to examine the petition or complaint received by the U.N. and to identify whether it "appears to reveal consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" within the terms of reference of the Sub-Commission. A copy of the complaint is forwarded to the government concerned which may submit a reply. The name of the complainant is withheld unless he or she has no objection to its being made public or known to the government. A Summary is made at the same time and sent confidentially to the members of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The reply of the government along with the complaint of human rights violation is then considered in private by a working group of the Sub-Commission. Those which appear to reveal consistent pattern of "gross and reliably attested violations are referred by the working group to the sub-commission itself. This In turn is forwarded to the Commission on Human Rights for information on gross violation of human rights. The Commission with the help of its own working group decides whether to car out a thorough study of the situation or to appoint a special committee rapporteur to investigate the violation of human rights as alleged in the complaint.

28
All the matters dealt with under this procedure are confidential until the ECOSOC decides otherwise. However, the names of the countries dealt with by the Commission in confidential meetings are announced each year. The confidentiality aspect of the 1503 procedure has been one of the greatest defects. Because the petitioner is not even, keep informed about the status of the communication beyond the initial acknowledgement of its receipt. However, thousands of letters complaining about the human rights violations are received by the United Nations every year, where they are dealt with by the Commission on Human Rights under the 1503 Procedure.

Thus, the provisions of the United Nation Charter concerning human rights provide a foundation for and Impetus to further improvement in the protection of human rights.

2.3 The International Bill of Human Rights

There are seven specific references in the Charter of the United Nations to human rights and fundamental freedoms. But the Charter nowhere defines or catalogues them. At the United Nations Conference on International Organization, held at San Francisco in 1945, the delegation of Chile, Cuba, Mexico and Panama had proposed that the Conference should adopt a "Declaration of the Essential Rights of Man". The Conference, however, did not deal with the proposal because it required a detailed consideration for which time was not available. The concern of the San Francisco Conference for the "International Bill of Rights" was evident from the closing speech of President Truman who stated: "We have good reasons to expect the framing of an international bill of rights; acceptable to all nations involved ... The Charter is dedicated to the achievement and observance of human rights and fundamental freedoms. Unless we can attain those objectives for all men and
women everywhere---without regard to race, language, or religion—we cannot have permanent peace and security". [14]

The San Francisco Conference did include in the Charter an article 68 by which the Economic and Social Council was instructed to set up a Commission for the promotion of human rights, and although there was no mention in the article of such a mandate it was generally understood that this Commission would draft an international bill of rights. [15]

In accordance with the principles of the Charter, the competent organs of the United Nations strove to formulate an international bill of human rights and to define the scope and extent of the inherent rights of man. Because of the heterogeneous character of the United Nations, this task was not an easy one. It required an arduous work. At the first part of the first session of the General Assembly in 1946 in London, the General Committee decided not to include in the Assembly's agenda the proposal by Panama that it should discuss the question of a "Declaration on Fundamental Human Rights and the Rights and Duties of the Nations". The representatives of Panama thereupon submitted a draft on "Declaration of Fundamental Human Rights and Freedoms" and requested that the same be placed on the agenda for the second part of the Assembly's first session. [16]

The Economic and Social Council established the Commission on Human Rights on 16th February 1946, in pursuance of article 68 of the U.N. Charter and instructed it to submit proposals, recommendations and reports regarding "an international bill of human rights". The Economic and Social Council had further requested the Commission to submit "suggestions regarding ways and means for the effective implementation of human rights and fundamental freedoms." [17]
The General Assembly, on 11 December 1946, in its 55th plenary meeting, decided to refer the draft on "Declaration of Fundamental Human Rights and Freedoms" to the Economic and Social Council for "reference to the Commission on Human Rights in its preparation of an international bill of human rights." The Commission on Human Rights held its session from 27th January to 10th February, 1947 under the Chairmanship of Mrs. Roosevelt of the United States. The most important business of the Commission was to draft the international bill of human rights. So far no decision had been taken as to the form and contents of the international bill of human rights. There were several possibilities regarding the form and contents of the bill which were discussed by the Commission. It could be drafted as a resolution of the General Assembly or in effect a declaration but then it was discussed that it would only have the character of recommendation and would not be binding in international laws. It was also discussed that it could be drafted as multilateral convention binding on all states which ratified it. But then an apprehension was expressed that this might delay the whole process. The other alternative was to make the bill a part of the U.N. Charter. However this solution had already been rejected at the San Francisco Conference. It may be noted here that the Indian delegates strongly favored the drafting of the bill in the form of a convention so as to have a binding effect of it on the states which ratify it. The Commission in its first session only held a general discussion on the form and content of the international bill of human rights and made no attempt to draft it. However it appointed a committee of Chairman, Vice-Chairman and Rapporteur to prepare a preliminary draft of the international bill of human rights with the assistance of the Secretariat. The committee was required to submit the draft of the bill to the Commission at its second session. However, this decision was criticized in the Economic and Social Council on the ground
that there was no proper geographical distribution of members of the informal drafting group. The Chairman of the Commission, Mrs. Roosevelt, with the approval of the Council, altered the procedure for the preparation of the international bill of human rights. A new Drafting Committee of eight members of the Commission from eight different states, with due regard to geographical distribution, was constituted. The eight states were: Australia, Chile, China, France, the Lebanon, the United States, the United Kingdom and the Soviet Union. The Council asked the Secretariat to prepare a "documented outline" of the bill and called upon the new drafting committee to prepare a preliminary draft of the international bill of human rights on the basis of draft supplied by the Secretariat.

The new Drafting Committee considered the question about the form and content of the international bill of human rights. Again two views were expressed. 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. Finally, it was agreed upon and accordingly the Drafting Committee decided to attempt to prepare two documents, *i.e.*, one in the form of a declaration which would mention general principles of standards of human rights, and the other in the form of a convention which would specify and define rights and the limitations or restrictions on their enjoyment. Thus, accordingly, the Drafting Committee prepared and submitted to the Commission on Human Rights draft articles of an international declaration on human rights and draft articles of an international convention on human rights. The Drafting Committee also considered the question of implementation of human rights and transmitted to the Commission on Human Rights a memorandum of the subject prepared by the Secretariat.
The Commission on Human Rights held its second session in Geneva from 2 December to 17 December. The Commission decided to apply the term "International Bill of Human Rights" to the entire series of documents in preparation and accordingly established three working groups, i.e., one on the declaration, one on the covenant and one on 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 were sent to governments for their suggestions, proposals and comments. After taking into consideration, the suggestions, proposals and comments of various governments, the Drafting Committee revised the draft declaration and the covenant.

The declaration was once again redrafted by the Commission at its third session from 24 May to 16 June 1948 but it did not have sufficient time to consider the covenant and the question of implementation. The declaration was, therefore, submitted to the General Assembly, through the Economic and Social Councils [18] meeting in Paris from 21 September to 12 December, 1948. On 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights as the first of these projected instruments. The General Assembly proclaimed it as "a common standard of achievement for all peoples and all nations." Thus, one great milestone had been achieved. It did not purport to set out a law but rather an ideal, towards which "every individual and every organ of Society... shall strive.[19] However, the General Assembly was not satisfied with a mere declaration of human rights which did not have the legal force of a treaty. The next task of the United Nations, therefore, was to formulate a precise definition of human rights which could be embodied in a regular treaty open to signature and ratification and, thus, capable of being enforced. In 1948, the General Assembly requested the Commission to
prepare, as a matter of priority, a draft covenant on human rights and draft measures for implementation, which could not be taken up earlier due to lack of time.

In 1949, the Commission, in its fifth session from 9 May to 20 June examined the draft covenant. In 1950, it revised the first eighteen articles on the basis of comments received from the governments. The Commission also decided that a permanent body, a Human Rights Committee, should be established which would receive any complaint by a State party to the covenant. It was also decided to secure the co-operation of specialized agencies in the drafting of articles on economic, social and cultural rights.

In 1950, the General Assembly declared that "the enjoyment of civil and political freedoms and of economic, social and cultural rights is interconnected and interdependent." Thus, the General Assembly decided then to include in the covenant on human rights, economic, social and cultural rights and an explicit recognition of equality of men and women in related rights as set forth in the Charter.

In 1951, the Commission at its seventh session, from 16 April to 19 May 1951, drafted 14 articles on economic, social and cultural rights on the basis of proposals made by the governments and suggestions given by the specialized agencies. It also formulated 10 articles on the measure of implementation of these rights under which State parties to the covenant would submit periodic reports regarding the observance of human rights.

In 1952, the General Assembly, after a long debate, requested the Commission "to draft two covenants on human rights, one to contain civil and political rights and the other to contain economic, social and cultural rights". It was specified that the two Covenants should contain similar provisions as far as
possible. It was also decided to include in both the Covenants an article which provided that "all people shall have the right to self determination".

The Commission began to work on two Covenants in 1952 at its eighth session from 14 April to 14 June and completed the two draft Covenants at its ninth and tenth sessions held in 1953 and 1954 respectively. The General Assembly reviewed the two draft Covenants in 1954 at its ninth session and the Assembly also decided to give the two Covenants widest possible publicity so that they might be studied by the governments and express their opinion freely. It was further recommended that its Third Committee start an article-by-article discussion of the texts at the tenth session, which continued until 1966 when the elaboration of the Covenants was completed. It was on 16 December, 1966 that the General Assembly adopted and opened for signatures, ratification and accession of three instruments instead of the one originally envisaged. [21] These instruments were: (i) The International Covenant on Economic, Social and Cultural Rights, (ii) the International Covenant on Civil and Political Rights and (iii) the Optional Protocol to the International Covenant on Civil and Political Rights. The Optional Protocol provides machinery for handling of complaints from individuals in specified circumstances. It took another ten years before the three instruments came into force in the year 1976. [22] These International Covenants and the Optional Protocol constitute a realistic step towards protection of human rights. They deal with almost all aspects of human rights. [23]

Thus, the Covenants, the Optional Protocol together with Universal Declaration of Human Rights constitute the International Bill of Human Rights.

(a) The Universal Declaration of Human Rights
The Universal Declaration of Human Rights is the basic international pronouncement of the inalienable and inviolable rights of all members of the human family. This may be regarded as the first landmark in contemporary history in the development of the concept of human rights. The General Assembly adopted it on 10 December 1948 at its meeting in Paris. In the operative part of the Resolution, the General Assembly while adopting the Universal Declaration of Human Rights, proclaimed:

This Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

While adopting the Declaration, forty-eight States voted in favor of the Declaration, none voted against, while eight states, i.e., the six communist countries which were then members of the United Nations, Saudi Arabia and South Africa abstained. In a statement following the voting, the President of the General Assembly pointed out that the adoption of the Declaration, "by a big majority, without any direct opposition, was a remarkable achievement", a step forward in the great evolutionary process. It was the first occasion on which the organized community of nations had made a Declaration of Human Rights and Fundamental Freedoms. The document was backed by the authority of the body of opinion of the United Nations as a whole and millions of people----men, women and children all over the world--would turn to it for help, guidance and inspiration. [24]
The Declaration was drafted in pursuance of the dispositions of the U.N. Charter introducing the promotion of a respect for human rights as an international concern of primary importance. The Declaration, in fact, expresses the spirit of the Charter by setting out in detail what in the Charter was already included as one of the main aims and purposes of the United Nations. [25] The U.N. Charter contains a rather platonic expression in the absence of any indication as to the contents of human rights. The Declaration gives the answer. It elaborates on the Charter and gives a definition of substance. [26] In the process of the definition of human rights, the Universal Declaration of Human Rights may be accepted as the true Magna Carta of mankind. According to Buergenthal, "because of its moral status and the legal and political importance it has acquired over the years, the Declaration ranks with the Magna Carta, the French Declaration of the Rights of Man and the American Declaration of Independence as a milestone in mankind's struggle for freedom and human dignity.[27] The Declaration consists of a preamble and 30 articles setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled without any discrimination.

The preamble spells out that the "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". The preamble also refers to the "faith in the fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women" which the peoples of the U.N. have reaffirmed in the Charter of the U.N. and their determination "to promote social progress and better standards of life in larger freedom". It also refers to the pledge taken by the Member States "to achieve in
co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

The provisions of the Universal Declaration can be classified into four categories: (i) General (articles 1 and 2); (ii) Civil and Political Rights (articles 3 to 21); (iii) Economic, Social and Cultural Rights (articles 22 to 27) and (iv) Concluding (articles 28–30). Thus, the Declaration basically proclaims two kinds of rights, i.e., civil and political rights on the one hand; and Economic, Social and Cultural rights on the other. Article 1 contains the philosophical postulates upon which the Declaration is based. It reads as under: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

From the plain reading of article 1, it is evident that the Declaration is based upon two basic assumptions i.e., (i) the right to liberty and quality is man’s birthright and cannot be alienated; and (ii) that because man is rational and moral being he is different from other creatures on earth and, therefore, entitled to certain rights and freedoms which other creatures do not enjoy.

Article 2 of the Declaration proclaims the principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms without any distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. This article further says that no distinction shall be made on the basis of the political, jurisdictional or international status of the country to which a person belongs. As stated earlier, the next group of articles, i.e., from articles 3 to 21 contain civil and political rights. Out of all these articles, article 3 is of most fundamental importance as it proclaims that
"everyone has the right to life, liberty and security of person", which is very essential for the enjoyment of all other rights. The other civil and political rights given in articles 4 to 21 are: freedom from slavery and servitude. [28] freedom from torture or cruel, inhuman or degrading treatment or punishment [29] the right to recognition everywhere as a person before the law; [30] equality before law and equal protection of the law [31] right to an effective remedy. [32] freedom from arbitrary arrest, detention or exile [33] the right to fair trial and public hearing by an independent and impartial tribunal [34] the right to be presumed innocent until proved guilty; [35] freedom from arbitrary interference with privacy, family, home or correspondence [36] freedom of movement [37] the right to seek asylum [38] the right to nationality [39] the right to marry and found a family; [40] the right to own property [41] freedom of thought, conscience and religion; [42] freedom of opinion and expression, [43] the right to freedom of peaceful assembly and association [44] the right to take part in the government of the country and the right to equal access to public services. [45] Article 21 of the Declaration also declares that the "will of the people shall be the basis of the authority of government" and requires "periodic and genuine elections" by universal suffrage.

The next group of articles, i.e., from articles 22 to 27 contains Economic, Social and Cultural rights. Article 22 is again of great importance. It provides: “Everyone, as a member of society, has a right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”. From the perusal of article 22 it is evident that economic, social and cultural rights are indispensable for human dignity and the free development of personality. It also indicates that these rights are to
be realized "through national efforts and international co-operation". At the same time article 22 also points out the limitations of that realization, the extent of which depends upon the resources of each State and of the international community.

The economic, social and cultural rights enshrined in articles 22 to 27 are: the right to social security [46] the right to work and equal pay for equal work; [47] the right to rest and leisure.[48] the right to a standard of living adequate for health and well-being of himself and of his family;[49] the right to education including education which shall be free at least in the elementary and fundamental stages [50] and the right to freely participate in the cultural life of the community [51]. It was indeed the inclusion of these economic, social and cultural rights in the Declaration which was one of the reasons for its great historical importance. In 1948, when the Declaration was adopted by the General Assembly, these rights were controversial in many countries.

Article 28 recognizes that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29 lays stress on the point that everyone has duties to the community in which alone the free and full development of his personality is possible. Further in article 29 (2) it is recognized that the rights and freedoms proclaimed in the Declaration are not absolute. It permits the state to enact laws limiting the exercise of these rights and fundamental freedom provided their sole purpose is to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms, in no case can be exercised contrary to the purposes and principles
of the United Nations. [52] The authority of the government to impose restrictions or limitations on the enjoyment of these rights and freedoms is further limited by article 30 of the Declaration which provides: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act which aimed at the destruction of any of the rights and freedoms set forth herein. Thus, no State can impose any restrictions which are outside the scope of this Declaration otherwise that would amount to violation of the Declaration".

No doubt, the proclamation of Universal Declaration of Human Rights was a remarkable achievement of the United Nations in the area of human rights, yet there were certain omissions in the Declaration. For example, there is no provision in the Declaration regarding the protection of minorities. It also did not recognize any right of petition even at the national level-a right so fundamental that it is recognized even by some authoritarian countless. Nevertheless, the Declaration has become so important in the modern world that it has become a yardstick to measure the degree of respect for, and compliance with, international human rights standards. The provisions of the Declaration are cited as justification for actions taken by the United Nations. It may be noted that the Declaration is not a treaty. It was adopted by the General Assembly as a "resolution" having no force of law. From the Preamble of the Declaration, its purpose is evident. It was adopted to provide "a common understanding" of the human rights and fundamental freedoms which are mentioned in the U.N. Charter and to serve "as a common standard of achievement for all peoples and all nations."

There has been a great controversy regarding the legal significance of the Declaration. One view is that the Universal Declaration of Human Rights is not a legally binding instrument. The other view is that the Declaration since its
adoption in 1948 has undergone a dramatic transformation and has now become binding on all the states whether they have adopted it or not. There is still another view, according to which the Declaration is not binding on the States, yet it has great moral and political force behind it and it serves as a code of conduct for the promotion and observance of human rights world over.

Sir H. Lauterpacht, who published a book shortly after the adoption of the Declaration, went to the extent of questioning even "moral authority" of the Declaration. According to him the moral authority and influence of an international instrument of this nature must be in direct proportion to the degree of sacrifice of the sovereignty of the States which it involves. The Declaration does not import to imply any sacrifice of the sovereignty of the state on the altar of the inalienable rights of man and, through them, of the peace of the world. In this regard, Prof. John P. Humphrey has rightly observed: "Had this great lawyer, who was also a dedicated if impatient partisan of human rights, lived longer, he would have recognized not only the great moral authority of the declaration but, it is submitted, it's now binding character as part of the law of nations. Starke is also of the view that "the Declaration could not and did not purport to be more than a manifesto, a statement of ideals, a "path finding" instrument [53]. According to Oppenheim, who also subscribes to this view, "the Declaration is not an instrument which is legally binding either directly or indirectly". However, Thomas Buergenthal has rightly pointed out that the process leading to the transformation of the Universal Declaration from a non-binding recommendation to an instrument having a normative character was set in motion, in part at least, because the effort to draft and adopt covenants remained stalled in the UN for almost two decades. During that time the need for authoritative standards defining the human rights obligations of UN Member States became even more urgent. As
the time went on, the Declaration came to be utilized with even greater frequency for that purposes. Even those writers who had earlier doubted the "legally binding" character of the Declaration, started conceding that it has gained 'Considerable authority as a general guide to the contents of fundamental rights and freedoms as understood by the members of the UN and it is important as providing connecting link between different concepts of human rights in different parts of the world.[54] Dr. Nagendra Singh has also expressed the view that the Declaration "was not mere a resolution of the General Assembly but a continuation of the Charter and had the dignity of the Charter.[55] There is another view which is gaining support at the international level due to repeated reliance and resort to the Declaration by the Governments and international organizations in matters of human rights and fundamental freedoms. According to Richard B. Lillich, it now may be argued persuasively that substantial parts of the Universal Declaration originally thought not to give rise to international legal Obligations, have become, over the past third of a century, part of customary international law binding upon all states. [56] This view was first advanced by scholars but subsequently gained support by the statements of international conferences, by State practices and even by Court decisions. McDougal and others have gone to the extent of suggesting that the Declaration has the "attributes of jus cogens. [57] In the opinion of Richard B.Lillich, it may be difficult to say that all rights enumerated in the Declaration have the character of jus cogens However, there is a little doubt that many of the human rights mentioned in the Declaration not only reflect customary international law but also partake of the character of jus cogens. For instance, prohibition of slavery is just one example of the same. Genocide, disappearance of individuals, torture or other cruel, inhuman or degrading treatment or punishment and systematic racial discrimination can be cited as
other examples. According to Lillich, this conclusion is particularly valid when
the right in question appears in both the Universal Declaration and the Political
Covenant. The latter, of course, is binding conventional law only between state
parties to it, but many of its provisions now can be said to have helped create
norms of customary international law including ones having jus cogens status,
binding even states which have yet to ratify it. [58]

It is submitted that over the years the Declaration has become most important
document in the field of human rights. The following observations of Prof.
Sohn seems to draw a reasonable conclusion: "There seems to be an agreement
that the Declaration is a statement of general principles spelling out in
considerable detail the meaning of the phrase "human rights and fundamental
freedoms" in the Charter of the United Nations. As the Declaration was
adopted unanimously, without a dissenting vote, it can be considered as an
authoritative interpretation of the Charter of the highest order. While the
Declaration is not directly binding on United Nations members, it strengthens
their obligations under the Charter by making them more precise". [59]

Whatever may be the legal status and significance of the Declaration, ever
since its adoption in 1948, it has been and rightly continues to be the most
important and far-reaching of all United Nations Declarations, and a
fundamental source of inspiration for national and international efforts to
promote and to protect human rights and fundamental freedoms. It has set the
direction for all subsequent work in the field of human rights. It has provided
the basic philosophy for many legally binding instruments including the two
international Covenants. The Declaration has formed the basis for enacting
regional Conventions on human rights such as European Convention on
Human Rights and Fundamental Freedoms, 1950 and American Convention on
Human Rights 1969. The provisions of the Universal Declaration have also
influenced various national Constitutions which have been particularly enacted after its adoption in 1948. Indian Constitution can be quoted one such example in which Part III dealing with fundamental rights reflects the Civil and Political Rights mentioned in the Declaration in articles 3 to 21. Part IV of the Indian Constitution dealing with directive principles of state policy reflects the Economic, Social and Cultural Rights mentioned in the Declaration in articles 22 to 28. It was perhaps the influence of the Declaration on the makers of our Constitution which tempted Dr. B.R. Ambedkar to make the following observations:

"The Declaration of the Rights of Man ... has become part and parcel of our mental make up ... these principles have become , silent immaculate premise of our outlook.[60] The International Conference on Human Rights which met at Tehran from 22 April to 13 May 1968, proclaimed that "the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community" and urged "all people and Governments to dedicate themselves to those principles and to re-double their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare." Since its adoption in 1948, the Universal Declaration has stood as an international "standard of achievement for all people and all nations." It has formed the "basis for action" for various U.N. bodies. Nearly all the international human rights instruments adopted by the U.N. bodies since 1948, elaborate the principles enshrined in the Universal Declaration. So much so that even the judges of the International Court of Justice have invoked the principles contained in the Declaration as a basis for their opinion. [61] Such is the importance of this historical document.
The International Covenant of Economic, Social and Cultural Rights (ICESCR) were adopted by the General Assembly in 1966. It required 35 ratifications to enter into force. These requisite ratifications were deposited on 3 October, 1976 and the Covenant entered into force on 3 January 1977, i.e., after three months of depositing instruments of ratification. The Covenant has a preamble and 31 articles divided into five parts. This Covenant contains a longer and much more comprehensive list of economic, social and cultural rights than the Universal Declaration of Human Rights.

The preamble to the Covenant serves as an introduction to the articles which follows. The first paragraph of the preamble is a statement of general principle that "recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." This clause has been taken from the first para of the preamble to the Universal Declaration of Human Rights. The second paragraph of the preamble to the Covenant recognizes the origin of human rights by stating that they "derive from the inherent dignity of the human person."

The third paragraph of the preamble recognizes that "in accordance with the Universal Declaration of Human Rights, the ideal of free human being enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights as well as his civil and political rights". This paragraph of the preamble underlines the importance of not only economic, social and cultural rights but also of civil and political rights. In other words, this paragraph underline the unity of the two Covenants on the said rights and at the same time maintain its distinctive character.
In the fourth paragraph of the preamble, the States are reminded of their obligations under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms.

Lastly, it is realized that each individual has duties to other individuals and to the community to which he belongs and it is considered the responsibility of each individual to strive for the promotion and observance of the rights recognized in the present Covenant.

Article 1 of the Covenant states that the right to self-determination is universal, and call upon States to promote the realization and the respect of that right. This article further states that "all peoples have the right of self-determination" and adds that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." It is further provided that "all peoples may, for their own ends, freely dispose of their natural wealth and resources". It may be relevant to note here that this most important right is not contained in the Universal Declaration of Human Rights.

The obligations which a State Party assumes by ratifying this Covenant are given in article 2(1) which states:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. From the language of this article it is evident that the State Party ratifying the Covenant does not undertake to give "immediate effect" to the rights, guaranteed under the Covenant. Instead, the State obligates itself merely to take steps "to the maximum of its available
resources" in order to achieve "progressively the full realization" of these rights. The State Party undertakes to take step for achieving the rights guaranteed in the Covenant, individually and through international co-operation or assistance. To achieve that purpose it will use all appropriate means including legislative measures.

The reason for this is that economic, social and cultural rights cannot be fully ensured without economic and technical assistance, education and planning. In many cases, international cooperation is required. Therefore, it would not be realistic to require immediate compliance of these rights. Keeping in view their nature and the specific problems each state must deal with them to ensure their full enjoyment. These realities also explain why, as a practical matter, there can be no uniform standards by which to measure compliance under the Economic, Social and Cultural Covenant. Since each State will invariably face different problems and since no two states are likely to have the same "available resources", different criteria will have to be applied to different States in determining whether they are living up to their treaty obligation.

Article 2(3) of the Covenant specifically says that developing countries, with due regard to human rights and their national economy, may determine the extent to which they would guarantee the "economic rights" recognized in the Covenant to "non-nationals". This so because each developing nation has to first sees the national economy and the economic status of its own nationals. However, subject to this restriction the State Parties undertake to guarantee the exercise of these rights without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 not only reaffirms the principle of equality of men and women as regards human rights, but also enjoins the States
to make that principle a reality. This article is also in consonance with the UN Charter.

Article 5 is "saving clause" which is provided to prevent the destruction or limitation of the rights recognized in other articles, and to safeguard rights recognized independently of the Covenant. Article 5(1) is derived from article 30 of the Universal Declaration of Human Rights, and provides protection against misinterpretation of the Covenant to justify infringement of a right or freedom, or restriction of such a right or freedom to a greater extent than provided in the Covenant. Article 5(2) covers the possible conflicts between the Covenant and the laws, regulations, customs of the contracting states or arrangements other than the Covenant binding upon them; and prevents States from limiting rights already enjoyed within their territories, on the ground that such rights are not recognized, or are recognized to a lesser extent, in the Covenant.

Part III of the Covenant from articles 6 to 15 contains a longer and much more comprehensive catalogue of economic, social and cultural rights than in the Universal Declaration of Human Rights. These rights are: the right to work, the right to the enjoyment of just and favorable conditions of work and equal pay for equal work; the right to form and join trade unions; the right to social security including social insurance; the right to protection of the family; the right to adequate standard of living for himself and his family; the right to the highest attainable standard of physical and mental health including the improvement of all aspects of environmental and industrial hygiene the right of everyone to 'education' and the right to take part in cultural life.

It may be mentioned here that the Covenant does not merely list these rights but it also describes and defines them in considerable detail and set out the
steps that should be taken to achieve their realization. It may be further noted here that these rights are not absolute rights. The State Parties to the Covenant recognize that in the enjoyment of these rights, "the State may subject such rights only to such limitations as are determined by law only in so far this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. Thus, a power has been given to the States to impose limitation on the enjoyment of these rights but such limitations have to be compatible with the economic, social and cultural rights and for promoting the general welfare of the people. The measures of implementation are contained in Part IV of the Covenant. This Covenant does not establish any inter-state or individual complaints system. Under article 16, the State Parties undertake to submit periodic reports on the measures adopted and progress made in achieving the observance of the rights contained in the Covenant. The reports are submitted to the Secretary General of the United Nations who transmits them to the Economic and Social Council and other specialized agencies [65] under article 19, the Economic and Social Council might transmit the reports to the Commission on Human Rights for study and general recommendation or as appropriate, for information. The State Parties and the specialized agencies concerned, might submit to the Economic and Social Council, comments on any general recommendation of the Commission on Human Rights.

Article 21 of the Covenant provides that Economic and Social Council may submit to the General Assembly reports with recommendations of a general nature and a summary of the information received from the State Parties and specialized agencies on the measures taken and the progress made in observance of the rights recognized by this Covenant. It may be noted here that the Covenant itself does not establish any special Committee to review the
reports. It merely stipulates that they are to be submitted to Economic and Social Council. Prior to 1976, the Economic and Social Council had delegated the task of reviewing the State reports to a working group of its members which was known as the "Sectional Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights". This Sectional Working Group reported its findings to the Council, the Commission on Human Rights and the specialized agencies. Starting in 1976, the Economic and Social Council adopted a series of resolutions which have resulted in the establishment of a "Committee on Economic, Social and Cultural Rights". This Committee consists of eighteen experts elected in their personal capacities. This Committee, being a permanent body and consisting of independent experts, is more effective in supervising the measures taken and progress made in achieving the rights contained in this Covenant.

State Parties to the Covenant agree that the international action for the achievement of the rights recognized under the Covenant includes such methods as the conclusion of Convention, the adoption of recommendations and furnishing of technical assistance and the holding of seasonal meetings for consultation and study. The Covenant also provides that nothing contained in it shall be interpreted as impairing the U.N. Charter provisions and of the Constitutions of the specialized agencies and also the inherent right of the peoples to enjoy and to utilize fully and freely their natural wealth and resources.

(c) International Bill of Human Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly in 1966. This Covenant also required 35 ratifications to enter into force. These requisite ratifications were deposited on 23
December, 1975 and the Covenant entered into force on 23 March 1976, i.e., after three months of depositing instruments of ratification. India acceded to the International Covenant on Civil and Political Rights on 10 April 1979 and it became effective for India on 10 July, 1979. The Covenant has a preamble and 53 articles divided into six parts. This Covenant contains a longer and much more comprehensive list of civil and political rights than the Universal Declaration of Human Rights. All the civil and political rights enshrined in the Charter have been drafted with specificity, the preamble and articles 1, 3 and 5 of the Covenant on Civil and Political Rights are almost identical with the preamble and articles 1, 3 and 5 of the International Covenant on Economic Social and Cultural Rights. [66]

In the third paragraph of the preamble of the two Covenants, there is difference in emphasis and wordings. In the International Covenant on Civil and Political Rights, the third paragraph states that "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 economic, social and cultural rights." The difference in emphasis and wordings exist to underline the unity of two Covenants while at the same time distinctive character of the two Covenants is also maintained.

The obligations which the State Parties assume by ratifying the Covenant are given in article 2(1) of the Covenant which states:

"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such
as race, color, sex, language, religion, political or other opinion national or
social origin, property, birth or other status”.

Article 2(2) of this Covenant further requires the State Parties “to adopt
such legislative or other measures as may be necessary to give effect to the
rights” guaranteed in the Covenant whenever such provisions do not exist
already under the domestic law. Thus, if we compare the obligation clause
given in article 2 of this Covenant with that of the International Covenant on
Economic, Social and Cultural Rights, it is evident that unlike the Covenant on
Economic Social and Cultural Rights, the Covenant on Civil and Political
Rights imposes an immediate obligation “to respect and to ensure” the rights it
proclaims and to take whatever other measures are required to achieve that
goal.

Under article 2(3) each State Party to the Covenant further undertakes to
ensure all persons “effective remedy” against violation of their rights or
freedoms notwithstanding that the violation has been committed by persons
acting in an official capacity. The right to remedy shall be determined by the
competent judicial, administrative or legislative authorities or by any other
competent authority provided for by the legal system of the State and whenever
such remedy is granted, it shall be enforced by the competent authorities.

It may be mentioned here that the Covenant on Civil and Political Rights,
rightly imposes an “immediate obligation” to respect and ensure civil and
political rights. The ensuring of civil and political rights of the people cannot
be postponed indefinitely and as such there is no difficulty which comes in the
way of their implementation. Also merely announcing the civil and political
rights of the people without an “effective remedy” will be like a “rope of sand”
which in no way will help in achieving the obligations of the States under the
Charter of the United Nations, *i.e.*, to promote universal respect for, and observance of, human rights and freedoms.

Part III of the Covenant on Civil and Political Rights is devoted to the traditional civil and political rights set forth in the Universal Declaration of Human Rights. However, the rights as given in the Covenant are in more detail. These rights are: the right to life; [67] prohibition of torture or cruel, inhuman or degrading treatment or punishment; prohibition of slavery, the slave trade and forced labour; prohibits arbitrary arrest or detention; right of the persons deprived of their liberty that they shall be treated with humanity and with respect for the inherent dignity of the human person; freedom from imprisonment on the ground of inability to fulfill contractual obligation; freedom of movement and choice of residence; freedom of aliens from arbitrary expulsion; right to equality before courts and tribunals, and right to a fair trial; protection against retroactive criminal legislation; right to recognition as person before the law; prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence and unlawful attacks on honour and reputation; freedom of thought, conscience and religion; freedom of opinion and of expression; prohibition of propaganda or war and incitement to national or religious hatred; right to peaceful assembly; right to freedom of association; right to marry and found a family; rights of the child; right to take part in public affairs and to vote and to be elected at genuine periodic elections held by secret ballot; right to equality before law and equal protection of the law; and the right of the minorities. However, these rights enshrined in the Covenant are not absolute but are subject to certain limitations. While the formulation of limitations clauses differs from article to article, it may be said that in general the Covenant provides that the rights and freedoms with which it deals should not be subject to any restrictions except those which are provided by law and
are necessary to protect security, public order, public health or morals or the rights and freedoms of other.

Article 4 of the Covenant contains a "derogation clause". Article 4(1) provides:

"In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the Covenant on Civil and Political Rights may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin".

Thus, even the power given to the State Parties to the Covenant to take measures derogating from their Obligation is also not absolute but subject to certain conditions mentioned in article 4(1) of the Covenant. At the same time, some of the rights are considered by the Covenant's [68] to be so essential that "no derogation" from them may be made even in time of public emergency. These rights are the right to life; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment the prohibition of slavery and servitude the prohibition of imprisonment merely on the ground of liability to fulfill a contractual obligation; the prohibition of retro-active criminal law the right of every person to recognition as a person before the law; and freedom of thought, conscience and religion Article 5(1) also prohibits the imposition of restrictions or limitations aimed at the 'destruction of the rights or "their limitation to a greater extent than is provided in the Covenant."
It may also be mentioned here that the Covenant on Civil and Political Rights lists certain rights which are not found specifically in the Universal Declaration of Human Rights. These rights are: the right of the people to self-determination; the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person; the prohibition of imprisonment merely on the grounds of liability to fulfill a contractual obligation; rights of the child; and the rights of the minorities.

At the same time there are certain important rights which are proclaimed in the Universal Declaration of Human Rights but interestingly they do not appear in the Covenant on Civil and Political Rights. These rights are: the right to seek and enjoy Asylum; the right to nationality; and the right to own Property.

The right to property was not included in the Covenant as there was no agreement on the scope and definition of this right. The main method of international implementation provided under the Covenant on Civil and Political Right is a "reporting procedure". Under article 40 of the Covenant, the State Parties to it undertake to submit reports on measures adopted by them giving effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. [69] The reports are required to be submitted to the Secretary General of the United Nations who shall transmit them to Human Rights Committee consisting of eighteen members elected by the State Parties to the Covenant. The members serve in their personal capacity. [70] The Committee study the reports submitted by the State Parties to the Covenant and transmit its reports and such general comments as it may consider appropriate, to the State Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from State Parties to the Covenant. The State Parties to the Covenant may also make observations on any comments made by the
Committee. The Human Rights Committee has developed a comprehensive set of reporting guidelines. But the main drawback is that it lacks the power to verify the State reports by undertaking its own investigations. However, the members of the Committee may require the representatives of the State to explain the contents of the report and ask for supplementary information. This enables the Committee to point out any problem in the compliance of the Covenant and the same may be brought to the notice of General Assembly of the United Nations. The Human Rights Committee is also not authorized to receive an individual communication directed against a State not a party to the Optional Protocol.

The Covenant on Civil and Political Rights also provides for inter-state complaint machinery that enables one State Party to charge another State Party with a violation of the treaty. But this complaint machinery is optional. It operates only if a State Party declares that it recognizes the competence of the Human Rights Committee to receive and consider communications that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Further, the optional system is based on the principle of reciprocity. Hence it operates only when a State which has made a declaration recognizing the competence of the Human Rights Committee in regard to itself is authorized to set the procedure in motion with regard to another State Party which has also recognized the competence of the Human Rights Committee.

Article 42 of the Covenant provides for the establishment of an additional organ, i.e., ad-hoc Conciliation Commission. If the matter referred to the Human Rights Committee under article 41 of the Covenant is not resolved to the satisfaction of the parties concerned, the Committee may with the prior consent of the State Parties concerned, appoint an ad-hoc Conciliation Commission of five persons acceptable to the State-Parties concerned.
However this system of dealing with the inter-state complaints is extremely weak. It provides neither for adjudication not quasi-adjudication, and establishes little more than formal conciliation machinery. The State-Parties are not formally required to accept the proposed solution, although their failure to do so may be called to the attention of the United Nations General Assembly by the Human Rights Committee in its annual report.

(d) Optional Protocol to the International Covenant on Civil and Political Rights

The Optional Protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly in 1966. [71] The Optional Protocol required ten instruments of ratification to enter into force. [72] It entered into force on 23 March 1976 along with the Covenant on Civil and Political Rights. [73]

This treaty was adopted as a separate instrument, but in fact it supplements the measures of implementation of the Covenant on Civil and Political Rights. The Optional Protocol provides machinery for the handling or complaints from individuals in specified circumstances. The Optional Protocol consists of a preamble and fourteen articles.

From the preamble of the Optional Protocol, it is evident that it was adopted to further achieve the purposes of the International Covenant on Civil and Political Rights and for this enabling the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violation of any of the rights set forth in the Covenant.

A State Party to the Covenant that becomes a Party to the Protocol recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be
victims of a violation by that State Party of any of the rights set forth in the Covenant on Civil and Political Rights. However, no communication shall be received by the Human Rights Committee if it concerns the State Party to the Covenant on Civil and Political Right which has not ratified this Optional Protocol. [74] In other words, this method of implementation is available only to those individuals who are subject to the jurisdiction of the State Parties who have ratified the Optional Protocol. Before communicating with the Human Rights Committee, the individual who claim the violation of his rights enumerated in the Covenant on Civil and Political Rights must first exhaust all domestic remedies. However, this shall not be the rule where the application of the domestic remedies is unreasonably prolonged. All anonymous communications or one which the Committee considers to be an abuse of the right of petition or to be incompatible with the Covenant provisions, are inadmissible. The Optional Protocol also provides that no communication shall be considered by the Human Rights Committee unless it has ascertained that the matter is not being investigated under another international investigatory or settlement procedure.

The Human Rights Committee is required to bring any communications submitted to it under the Optional Protocol to the attention of the State Party concerned. The concerned State Party undertakes to provide the Committee written explanation within six months of the matter and the remedy, if any, that it might have taken. Thereafter, the Committee considers the communications received under the Optional Protocol in the light of all written information made available to it by the individual and by the State Party concerned. The Committee holds closed meetings when examining communications under the Optional Protocol. Then the Committee is required to forward its views to the
State Party concerned and to individual and will provide the General Assembly annually with a summary of its activities under the Optional Protocol.

Since the entry into force of the Optional Protocol in 1976, the Human Rights Committee has dealt with a large number of individual communications. However, many of these have been found inadmissible under article 5(2) of the Optional Protocol 'either because domestic remedies had not been exhausted or because they involved the same matter that was being examined under another procedure of international investigation or settlement. But on the whole, the activities of the Committee in protecting the human rights of the individual are praise-worthy. [75]

(e) Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

It was on 25 November, 1981 that the General Assembly decided to consider the idea of elaborating a draft of a Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty.[76] It was adopted and proclaimed by the General Assembly on 15 December, 1989.[77] This Second Optional Protocol required ten instruments of ratification to come into force.[78] The provisions of the Second Optional Protocol apply in addition to the provisions of Covenant on Civil and Political Rights. The Second Optional Protocol has a preamble and eleven articles.

From the preamble to the Second Optional Protocol, it is evident that the State Parties to it believe that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights. The State Parties recall articles 3 of the Universal Declaration of Human Rights guaranteeing everyone right to life and note article 6(2) of the
International Covenant on Civil and Political Rights which refers to abolition of the death penalty in terms and strongly suggest that abolition is desirable. The State Parties feel convinced that all measure of abolition of the death penalty should be considered as progress in the enjoyment of the right to life.

It has been agreed by the State Parties that no one shall be executed within their jurisdiction and that they shall take all the necessary measures to abolish the death penalty within their jurisdiction.

No reservation is admissible to the Second Optional Protocol. However, there is one very important exception to this. State Party ratifying the Second Optional Protocol may make a reservation at the time of ratification or accession that provides for application of the death penalty in times of war pursuant to a conviction for a most serious crimes of a military nature committed during war time. The State Party making such a reservation is required to communicate to the Secretary General of the United Nations the relevant provisions of its national legislation applicable during war time. The State Party making such reservation is also required to notify the Secretary General of the United Nations of any beginning or ending of a state of war applicable to its territory.

The State Parties to the Second Optional Protocol are also required to include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant on Civil and Political Rights, information on the measures that they have adopted to give effect to this Protocol. Article 41 of the Covenant of Civil and Political Rights also applies mutatis mutandis.

With respect to the State Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted in 1966, the
competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Presently there is trend in most of the countries for abolishing the death penalty. And this Second Optional Protocol is a timely reminder to the humanity to abolish death penalty and respect the basic human right to life. For more details about the Universal Declaration of Human Rights please see the appendix 1.

References

[4] Ibid.


[13] Article 34 of the Statute of the International Court of Justice,


[19] See the Preamble to the Universal Declaration of Human Rights.


[25] Article 1(2) and (3) of the Charter of the United Nations.


[29] Article 5.


[33] Article 9.

[34] Article 10.


[38] Article 14.

[39] Article 15.
[40] Article 16.
[41] Article 17.
[49] Article 25
[51] Article 27.
[52] Article 29(3).

[54] Ian Brownlie, Basic Documents in International Law, 144 (1972).

[56] Richard B. Lillich, "Global Protection of human Rights" in Theodor Meron(Ed.), Human Rights ill International Law: Legal And Policy Issues, 116 (1984). Professor Humphrey, who was one of the Universal Declaration's drafters, also supports the view that it is part of the customary law of nations and therefore is binding on all States.

65

[58] The author has supported his argument by referring to the case concerning United States Diplomatic and Consular Staff in Tehran. (JQ80) I. C. 1.3.


[65] Articles 17 and 18 relating to the participation of specialized agencies.


The International Convention on the Elimination of all Forms of Racial Discrimination. 1965 also provides for a similar reporting procedure. (Vide article 9).

Article 28 of the International Covenant all Civil and Political Rights.

General Assembly Resolution XXI/2200 of 16 December 1966.

Article 9 of the Optional Protocol.

As on 30 June 1994, 78 States had ratified this Optional

Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.


General Assembly Resolution 30/59 of 25 November 1981.


As on 30 June 1994, 22 States had ratified this Second Optional Protocol.

See the Preamble to the Second Optional Protocol.