CHAPTER TWO

GENESIS OF THE CONCEPT OF HUMAN RIGHTS:
FROM UNIVERSALISATION TO REGIONALISATION
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2.1 Introductory

I begin my study with the historical evolution of the philosophy and history of the concept of human rights. As is well known, history of human rights is synonymous to the history of human civilization.\(^1\) The concept of human rights has its reflections in the oldest religious texts, political writings and legal debates. However, these rights could be declared as ‘common standards’\(^2\) only in the second half of the twentieth century.\(^3\) Within a few decades, the centuries old concept of human rights grew up to four generations. And this worldwide growth and acceptance to these rights gave birth to a global network of human rights regime at different levels.

This chapter is an attempt to give an overview of the philosophical, theoretical and historical evolution of human rights. The prime focus in this chapter would be to trace the politico-legal development of human rights concept so as to understand the true essence of human rights. The chapter would also bring out the religion based approaches to human rights from where I have tried to infer and highlight the human rights values imbibed in the societies of South Asia.

2.2 Religious Philosophies and Human Rights

Rights are essentially moral in nature and human rights are no exception. As Jack

Donnelly says, human rights are moral rights of the highest order. In any society, the first and the foremost source of morality are the religious texts and discourses. Being based on morality and righteousness, religious ideas introduce an individual to the philosophy of human rights. Studying religious approaches related to human rights also provides a yardstick to measure the relevance of the approach towards human rights imbued in the ancient religions. For example, while studying religious approaches to human rights, I could observe that all the religions manifested concern for good governance and rights of the poor and the oppressed. In other words, they stood for the political, economic, social and cultural kind of human rights, which are popularly known as the second generation human rights by the modern world. An overview of the approaches to human rights imbibed in different religions of the world has been discussed in the following paragraphs.

Hinduism, the ancient of all religions in the world originated in South Asia, particularly in the ancient India, which included almost whole of South Asia at that time. Hinduism, as Paul Laurens mentions in his book, is one of the oldest religions in the world, dating almost 3000 years back. The meaning of human rights as per Hinduism has been more wide in scope as compared to the present day meaning of human rights in two ways: firstly, the word ‘Adhikara’ in Hinduism includes the ‘duties’ pertaining to individuals by way of ‘Dharma’ and secondly, it assigns some inalienable rights to all the living beings including

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plants, thus included the environmental rights as well\(^9\). Both the aspects are related to the modern day thought on human rights as well, thus proving the human rights approach of Hinduism relevant and applicable.

In addition to this, in Hinduism, the principle of *Vasudeva Kutumbkam* was propounded on the belief that there is universality of human soul and belief that the whole world is one family with common concerns. Such ideas are revisited by modern society under the slogans of globalization. Further, principles like *Ahimsa* and *Rajadharma* in Hinduism restricted the governance, and promoted political rights along with good governance.\(^{10}\) Non injury, charity, concern for the hungry and homeless, were some of the human rights concerns touched by Hinduism\(^{11}\) which are still concerns of the modern day.

Another religion, Confucianism was founded by a scholar named Kong Fuzi in 551-479 B.C. in China, who began to be known as Confucius later. He stressed on duties of man towards others\(^{12}\) and also emphasized the interdependence of the ruler and the ruled.\(^{13}\) Mencius and Hsun Tzu further contributed to Confucianism; and added the distinction and recognition of individual rights to the Confucian approach of human rights. This religion favoured ethical life\(^{14}\) and harmony. It also emphasized goodness, benevolence, love and human heartedness.\(^{15}\)

Later, new religions named Buddhism and Jainism emerged and focused on equality of castes and gender which was a kind of criticism offered to some of the practices under Hinduism.\(^{16}\) Buddhism stressed non-discrimination,\(^{17}\) equality,

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\(^{15}\) Paul Laurens, 2003, p. 7.

freedom of religion, tolerance and learning. The Buddhist writing, _Pancasila_, could be looked upon as one of the earliest pronounced texts on human rights.

In addition to Hinduism, Buddhism and Confucianism, another religion which found birth in South Asia is Jainism. The name of this religion originated from ‘_Jina_’ which means self control; hence, _Samyana_ or control over one’s senses is one of the principles of this role, which means conqueror of senses. Jainism preaches _Maitri_ (friendliness) _Karuna_ (compassion) _Mudita_ or _Pramoda_ (sympathetic joy), and _Madhyasthabhava_ (impartiality). Jainism has great concern for all living beings as Mavavira said ‘Kill no creature’.

The religion of Islam also has deep roots in the South Asian region. This religion is fifteen hundred years old in origin. Islam teaches tolerance and compassion for the poor. Prophet Mohammad has also advocated human rights through non-discrimination and the holy book of _Quran_ speaks for religious tolerance as: ‘All men are brothers and the non Muslims should be treated with no less dignity and respect for their personality than Muslim’.

Sikkhism is a young religion of Indian origin. It also promoted non

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17 The Buddhist texts speak for human rights approach as: ‘_No Jaccavasalo hoti, najaccahoti Brahmano Kammuna Vasalo Hoti, Kamuna hoti Brahmano._’ Meaning a person is neither a slave nor a Brahmana (according to Hindu caste system) simply by virtue of his birth, but only by virtue of his good or bad actions. For further details, see: Gokulesh Sharma, _Human Rights and Legal Remedies_, Deep and Deep Publications, New Delhi, 2003, p. 19.


19 The Buddhist monasteries (Schools of Learning) were open to both men and women. For further details, see: Michael Haas, 2008, p. 12

20 _Pancasila_ (the five percepts) one of the noble right fold path preaches _metta_ (Kindness), _ahimsa_ (Non-violence) _dana_ (social values or charity), _Katannuta_ (gratitude) _garava_ (reverence) _peyyavajja_ (courtesy) _Samanattata_ (equality), _Khanti, sorocca_ (toleration) and _sacca_ (sincerity). For further details, see: L.P.N. Perera, “Buddhism and Human Rights”, _Journal of the Institute of Human Rights_, Vol. 8, No. 1, June 2004, pp. 180-201, at p. 184.


22 _ibid._, p. 235.


discrimination and religious tolerance. The holy book of the Sikhs, *Shri Guru Granth Sahib* also speaks for freedom of expression and other political rights.\(^{26}\) Sikhism was founded by Guru Nanak Dev around more than five hundred years ago. He preached equality in general and specifically between genders and also spoke for non discrimination on the basis of caste.\(^{27}\) The last of the ten Gurus of Sikhs, *Shri Guru Gobind Singh*, waged a war against oppressive rule and hence was the protector of political rights of his society.

Sikhism also had certain religious practices to promote economic, social and cultural rights, for example, the *Pangat* System of dining together while sitting on floor in *Gurudwaras* (Sikh temples) where people belonging to different castes and status sit together and eat food cooked in community kitchen. This tradition is still followed in *Gurudwaras*. Also, there was a practice of *Dasvand* or giving ten percent of one's earnings to charity as a principle of this religion which attempts to promote social welfare.

Judaism is a religion which originated between 1304-1237 B.C. The religion is based on the Ten Commandments of Moses.\(^{28}\) Judaism establishes faith in all religions and people as the religion teaches infinite worth of every person and the sanctity of every individual life.\(^{29}\) It is observed that human dignity, the first crucial notion of human rights, is very well supported by the Judaic - Christian - Islamic tradition.\(^{30}\)

The religion of Christianity is known for its principles of equality and freedom, and is based on codifications done by St. Paul of Tarsus, after the crucification of Jesus.\(^{31}\) The secularization of the universalist claims of the Christianity led to the birth of the free individual.\(^{32}\)

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\(^{26}\) Joseph Wronka, 2008, p. 54.


\(^{29}\) L.N. Basu, 2006, p. 5.


\(^{31}\) Joseph Wronka, 2008, p. 56.

It is interesting to note that out of all the religions discussed above most of the religions either originated in South Asia, for example, Hinduism, Buddhism, Jainism, Sikhism or are largely followed in this region, for example, Islam, Christianity etc. Therefore, inclusion of the religion based philosophy of human rights views perhaps have strengthened my idea that South Asia has a rich philosophic culture of human rights and the societies of this sub-continent are not devoid of human rights understanding which is generally mistaken to be the reality. There is need to consolidate this philosophy in the form of a mechanism by proposing a human rights mechanism for the sub-region, which is the purpose of this research. I would conclude the importance and influence of various religions on the South Asian sub-region by using the following paragraph:

Four of the world’s nine great religions - Hinduism, Buddhism, Jainism and Sikkhism - evolved here (South Asia). Two others - Islam and Christianity - arrived in the sub-continent mere decades after their founding in West Asia and established deep roots. A seventh and eighth - Judaism and Zoroastrianism - came here through believers escaping persecution in Palestine and Persia. Only the ninth, Confucianism, stayed away. But its Monks travelled frequently from China to India to exchange ideas and debates theology.  

The religious ideas discussed above were also endorsed by the political philosophers and, therefore, lead to the foundations of political discourses in earlier times. As Carl Schmitt notably mentions in his work, *The Concept of the Political*, ‘every religious, moral, economic, ethical or other antithesis transforms into political one if it is sufficiently strong to group human beings effectively. . . .’  

Similarly, in case of human rights, there is a rich political thought hinting upon the human rights related needs of the society and its principles. It was the convincing spirit of these rights that got further reformed in political ideas. I am now going to discuss some of the political ideas on human rights in the paragraphs ahead.

### 2.3 Political Ideas and Human Rights

In addition to the religious discourses and texts, another source of evolution of the concept of human rights in any society is the political ideas given by different
thinkers at different periods of time with respect to their immediate social, political and economic conditions. I have tried to discuss some of these political ideas under the categories of the Greek, the Roman and the Indian political thought to highlight the impact of different religions on these different political ideas and also to facilitate comparison.

2.3.1 The Greek Political Thought and Human Rights

George Lobo describes, ‘The Greeks, particularly Aristotle, developed a notion of the natural law according to which each being had its own inherent value’. According to C.L. Wayper, more than anything else, the Greeks were great humanists since man or human being is the centre of all their thoughts. The Greeks eulogized human reason so much that once a scholar named Pindar wrote ‘One is the race of gods and men’.

Lycophron, a Greek Sophist scholar said that State is the guarantor of men's rights. Glaucon, another Greek thinker, wrote in his book, The Republic, that men share a common view to abstain from injustice. In this way the Greeks contributed to the promotion of human rights of civil and political nature, known as the first generation human rights in the modern world.

Socrates, another Greek thinker, spoke against his State system which is one of the most important political rights of the modern times. His ideas were articulated by his student and scholar Plato as the Theory of State in his famous book entitled The Republic. Plato also keeps individual to the centre of his political thought. Aristotle, a student of Plato, and known as the Father of Political Science, believed that it is right of every individual to grow intellectually and morally and it is duty of the State to ensure that the people are provided an environment of liberty, equality and security to grow. He gave a very popular Theory of Classification of States. One of the bases for this classification, one

37 ibid., p. 9.
38 id.
39 id.
was how much and how many rights people enjoy within a State and it also provided for right to revolt to the people.\textsuperscript{41}

\subsection{2.3.2 The Roman Political Thought and Human Rights}

The Roman thought is equally important as the Greek, as the Romans gave more importance to practical aspects of law and while doing so, they laid foundations for some human rights principles too. George Lobo argues that the “greatest contribution of the Romans was the development of civil law, not only the particular laws of each nation, but also the \textit{ius gentium} or “common law of all humans” (\textit{Commune Osmium Hominum ius}) as Gaicus phrased it.\textsuperscript{42} Another Roman political thinker Cicero expounded that nature . . . unites man with man and joins them in founds of speech and common life.\textsuperscript{43} Another thinker Marcus Aurelius paved the way for the idea of duty to the human rights concept.\textsuperscript{44} In his writing \textit{De Republica}, Cicero writes ‘a \textit{res publica} or a public concern is a \textit{res populi} or concern of the people’\textsuperscript{45} which means that whatever is related to the public affairs is the concern of the public. He also stressed that the purpose of the State is common good of the people.\textsuperscript{46} He continues the approach of the Stoics towards natural equality and faith in human reason.\textsuperscript{47}

The Middle Ages saw some of the very important developments regarding the definition and meaning of law, which hinted upon the human rights awareness of that age. St. Augustine, a scholar of this time period, in his work, \textit{The City of God}, laid the foundations for solidarity rights, now understood as the third generation human rights.\textsuperscript{48} Another medieval thinker St. Thomas Aquinas gave fourfold classification of law, namely, eternal, natural, divine and human law. The test of all categories is based on human reason.\textsuperscript{49} This concept was further by

\begin{thebibliography}{99}
\bibitem{id.} id.
\bibitem{Joseph Wronka, 2008} Joseph Wronka, 2008, at pp.54-56.
\bibitem{ibid.} \textit{ibid.}, pp. 55-56.
\bibitem{id.} id.
\bibitem{G. Sreedathan, 2006} G. Sreedathan, 2006, pp. 132-133.
\end{thebibliography}
St. Aquinas in his prestigious work the *Summa Theologica*.\(^{50}\)

As we have observed in the discussion above, the ideas of human rights were scattered throughout the ancient as well as the medieval thought. These somewhat vague ideas on human rights of the ancient and medieval times were further polished in the modern times by the scholars that are discussed in the next part of this chapter.

2.3.2.1 *The Modern Western Political Thought and Human Rights*

The modern thinkers could not escape expressing the age old consciousness of human rights and rather made remarkable contributions to the development of the concept. For example, John Locke in the late 17\(^{th}\) century promoted natural rights which were reflected in both the American Declaration of Independence, 1776 and the French Declaration of the Rights of Man and the Citizen, 1789.\(^{51}\) Jean Jacques Rousseau in his writing the *Social Contract*, contributed greatly to the basics of modern human rights by establishing the principles of popular sovereignty by his ‘General Will’, which meant that the ultimate power rested with the people. Montesquieu adopted the ideas of Polybius and Cicero of the Roman period and developed the theory of separation of powers\(^{52}\), the purpose of classifying the organs of government (the legislative, executive and judiciary) and assigning each organ a task, was to break away with tyrannical rule of one man, in which all the organs of the State were seated.\(^{53}\)

A lot had been said and written on the kinds of rights over a long period of time. However, the understanding of genesis of the political thought on human rights

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51 John Locke wrote *the Second Treatise* wherein he laid foundations of civil and political rights of the people by way of proposing two contracts, the social and the political. He assigned three natural rights to every human being namely which were inalienable and absolute rights entrusted to everyone by nature. Hence he laid down the basic philosophy of human rights, which remains the basis for human rights even today. For further details, see: Peri Roberts and Peter Sutch, *An Introduction to Political Thought: A Conceptual Tool Kit*, Atlantic Publishers, New Delhi, 2005, pp. 103-104.

52 *ibid.*, p. 607.

would be incomplete without referring to the Indian political thought on human rights. The next part of this chapter presents discussion on this aspect.

2.3.3 The Indian Political Thought and Human Rights

Since this study is being conducted in India and focuses on the South Asian region, it becomes inevitable to discuss and to give due consideration to the Indian political ideas reflecting human rights norms. As I have discussed in the overview of the Hindu religion, there were a large number of human rights concerns articulated by the texts of this religion. It had its clear impact on the political ideas, too. Given below is an overview of the ancient and the modern Indian political ideas. Herein, it is noticeable that unlike the idealism of the ancient Greek thought, the Indian political thought of the same period was much more practical and detailed. The main sources of the ancient Indian political thought are the religious writings, like the Vedas, Upanishads, Smritis etc. etc.

2.3.3.1 The Ancient Indian Political Thought and Human Rights

Kautilya, one of the prominent ancient Indian thinkers, promoted swarajya which means self rule, hence hinted upon rights of self determination. Kautilya wrote the Dharmashastra based on the three Hindu Vedas, namely, Rigveda, Yajur Veda and Sama Veda. Kautilya was also in favour of abolishing the practice of dasatva (slavery).

In addition to the ancient Indian thinkers, the modern Indian thinkers have also contributed significantly to the concept and values of human rights. Their ideas are not only relevant for this doctoral study but they have also had an impact on some of the prominent international developments. For example, leaders like Mahatma Gandhi have even contributed his ideas while the Universal Declaration of Human Rights (UDHR), 1948 was being framed. This has been discussed ahead in detail.

2.3.3.2 The Modern Indian Political Thought

The modern Indian thinkers also wrote a lot for the rights of human rights and

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56 ibid., p. 149.
with much conviction. It was mainly due to subjugation of India to the foreign rule that the scholars and leaders raised human rights issues very forcefully. Rabindra Nath Tagore is considered as the prophet of rights in India. In his book the *Gitanjali*, he speaks for economic, social and civil and political rights when he says “give me the strength never to disown the poor or bend my knees before insolent might.” He shared his spiritual approach to freedom with Aurobindo and Vivekananda. He dreamt of political freedom for Indian and Asia.

Mohandas Karam Chand Gandhi (1869-1948) is world renowned for his promotion of the principle of *Ahimsa* or non-violence which is based on truth and fearlessness (*abhayam*). He made the Indian masses aware of their political rights including right to resist while following non-violence as means. He not only promoted right to self determination and self rule as political rights, but also promoted economic, social and cultural rights of the masses. All his ideas like *Swaraj*, *Non-Violence*, *Satyagrah* etc. were meant to respect human dignity. He also raised voice against racism in South Africa even before he could voice the human rights of his own people in India. Gandhi’s ideas on human rights are so vast that his ideas were also reflected in the UDHR, 1948, which is discussed in the chapters ahead also. The Gandhian philosophy is so vast that it cannot be fully included in a part of the chapter of this study. Accordingly, I would have to limit Gandhism to a few lines only.

The contribution of Swami Dayanand Saraswati, the founder of Arya Samaj, is also of great importance as a nationalist. As a reaction to the British rule, he propagated

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57 *ibid.*, p. 169.
58 *id.*
60 *ibid.*, p. 181
democracy and decentralization of governance. Dada Bhai Naroji was another eminent Indian thinker who spoke against economic exploitation and asked for the rights of the Indians. He gave the ideas of economic nationalism to India under the British rule. He was greatly concerned for poverty in India and held Britishers’ Drain Theory primarily responsible for it. He also raised his voice against moral drain of Indians, wherein he accused the Britishers of under-employing Indians, hence, brought right to equality of opportunity in the spotlight. Mahadeva Govinda Ranade, raised the issue of individual freedom and said that political rights could not be separated from the social ones.

During the freedom struggle India generated a lot of similar political ideas from Muslim leaders, for example, Mohammad Ali Jinnah. Some of them wrote poetic versions to express their nationalist concerns, for example, Mohammad Iqbal who wrote the lyrics of Sare Jahan Se Achha Hindustan Hamara. Ram Prasad Bismil was one such Indian freedom fighter who picked a Muslim suffix to his name and wrote several nationalist songs including Sarfroshi Ki Tammanna ab Hamare Dil Main Hai, Dekhna Hai Zor Kitna Bazu-e-Katil Main Hai. The focus of such writings was also against oppression and in favour of political rights.

The variety of political thought in India as well as outside India facilitated the growth of human rights as a concept. The political discussion and speculations in several pockets of the world then got transformed into the legal debates and the legal codes. From here the codification of human rights values began which was perhaps the most important phase, since from here, the journey of ‘human rights values’ to become ‘human rights law’ essentially began.

2.4 The International Legal Developments and Human Rights: The History of Codification of Human Rights Values

Law of any land is not a root less practice; it reflects an age of legal culture of the respective society. The legal codifications of the ancient times also followed

64 Urmila Sharma and S.K. Sharma, Indian Political Thought, Atlantis Publishers, Delhi, 1990, pp. 137-139.
65 *id.*
66 *ibid.*, p. 119.
67 *ibid.*, p. 121.
68 For further details, see: Ram Kumar, Ram Prasad Bismil, Alekh Prakashan, New Delhi, 2008.
the cultural values laid down by the religious discourses or political ideas discussed above. In case of human rights, the earliest traceable codification is probably the Code of Hammurabi compiled in 1810-1750 B.C.\(^69\) and it had 282 clauses.\(^70\)

The Code dealt with criminal justice system and also imposed restriction on the unfair judges.\(^71\) In the Christian history, Moses revealed the Torah as a Legal Code during 1304-1267 B.C.\(^72\) declaring that bearing false witnesses was prohibited, which is an important element of justice even today.

Cyrus the Great, of Persia drafted the Charter of Cyrus.\(^73\) This Charter was probably the first legal document referring to the word ‘rights’.\(^74\) Religious freedom and cultural toleration were emphasized in it. Human Rights Charter, as called by Bertrand G. Ramcharan, the Charter of Cyrus prohibited slavery and oppression.\(^75\) In the period of 400 B.C., after the death of Jesus of Nosareth, the Christian Gospels of Mathew, Mark, Luke and John were written keeping in view the rights of the needy.\(^76\)

The Islamic legal ideas came in a codified form by way of the constitution of Medina in 570-632 A.D. Prophet Mohamed laid down tolerant and plural laws for the plural society of Medina which included Jews, Christians, Muslims and Pagans etc. Concern for the poor and needy was at the core of this constitution. Romans contributed to the development of law since 455 B.C. by way of the Law of the Twelve Tables. A commission of ten men (Decemviri) was appointed in


\(^{70}\) The Code began with the following words: “Me, Hammurabi, the obedient, god fearing Prince to make manifest justice in the land, to destroy the wicked and the evil doer, that the strong harm not the weak”. For further details, see: Bertrand G. Ramcharan, 2008, pp. 9-11.

\(^{71}\) Michael Haas, 2008, p. 37.

\(^{72}\) *id*.

\(^{73}\) *id*.

\(^{74}\) *id*.

\(^{75}\) Bertrand G. Ramcharan, 2008, p. 12.

\(^{76}\) Michael Hass, 2008, p. 38.
455 B.C. to draft a code of law binding upon all and sundry. The Corpus Civilis, the most comprehensive code of Roman law and the basic document of all modern civil law was compiled by the order of Byzantine Emperor Justinian-I, came in 533 BC. The contribution of all these legal texts was paving the way towards codified laws.

In the period of 304-232 B.C., the Indian King Ashoka installed rock edicts throughout his kingdom's territory, highlighting the principles related to treatment of prisoners of war, religious toleration and of course justice, along with abolition of capital punishment and torture to any living being. In 1100 A.D., King Henry-I of England issued 'the Charter of Liberation' granting freedoms to church officials and nobles, another step to give rights a codified shape. In Spain, the Monarchs had constituted courts for advisory function which constituted of nobles. In the twelfth century, these Courts were expanded to include members from the middle class, which symbolised the increasing scope of rights to the people.

In 1930, the world saw its first Parliament in Iceland called as the Althing. The Great Charter, known as the Magna Carta was signed on 10 June 1215 by King John and his barons. It reiterated the Charter of Liberation and brought the King on equal footing to nobility and made him subject to rule of law. In France,
during the same time, Philip the Fair, mooted a bicameral system for taxation; First Estate consisting of Clergy, the Second consisting Nobility and the Third having Commoners.\footnote{82}{id.}

Parliaments came up in several other countries of Central Europe and Scandinavia, for example, Sweden's \textit{Rikstag}.\footnote{83}{Alun A. Preece, “The Development of Bicameral Parliamentary Systems”. Available at: http://www.murdoch.edu.au/elaw/issues/v9n3/preece93.html. Visited on 13 January 2010.} Although the masses had little role to play in these newly founded institutions; however, it was a beginning of a new era of democracy. In the seventeenth and eighteenth century, there were remarkable developments in England which proved to be the plinth of international human rights.\footnote{84}{In 1628, in England again the Petition of Rights was issued to give more rights to the commoners, for example all taxes to be levied by the parliament, no arrest without showing cause etc. In 1679 the \textit{Habeas Corpus} Act came under James II son of Charles II. He also issued the Declaration for Liberty of Conscience in 1687 highlighting the Freedom of Religion. In 1689 under the reign of William of Orange the English Bill of Rights was signed pronouncing the parliament the supreme Law making agency. In 1701, the Act of Settlement came as a final step towards limited monarchy the power to choose successors of the throne was given to the Parliament. At international level if any event had an ever lasting impact was the Treaty of Westphalia in 1648. The treaty established there basic principles (1) Equality of States (2) State sovereignty (3) Principle of Non-interference. Available at: http://www.murdoch.edu.au/elaw/issues/v9n3/preece93.html. Visited on 14 January 2010.}

The American contribution to the development of Human Rights is no less than that of England. Rather being a colonised region, the American developments are perhaps more relevant for the study.\footnote{85}{In 1774, Granville Sharp published a Declaration of the People's Natural Rights to share in the Legislature. It led to the establishment of continental congress, a body consisting representatives from the colonies. The continental congress first adoption was the Declaration of Rights and Grievances, which promoted equal rights of the colonists and the British nationals. In 1776, the Declaration of Rights was incorporated into the constitution of Virginia. A month later, colonies drafted the Declaration of Independence. In 1777, the Continental Congress adopted the Articles of Confederation and Perpetual Union, adopted by tertian States as a treaty by 1781. The American independence was recognized in 1783 by the}
Liberty, Equality, Fraternity, in 1789 has great historical significance and equally great contemporary relevance. Some scholars believe that the slogan of the French revolution has been the plinth for the categorization of modern human rights in three generations as is known by the world today.

The Congress of Vienna (1814-15) also played a role to strengthen human rights norms as it brought the Europe together for reconstruction after the war. Till nineteenth century, few countries like Britain, France, the United States and Spain, to name a few, had established individual rights.

Till nineteenth century period, the concept of human rights had gone through a slow growth. However, the developments of the twentieth century contributed to an unprecedented growth of human rights norms. In the modern era, the international and regional organizations played a very important role in promoting and enhancing the human rights movement throughout the world. An overview of these developments is presented in the following paragraphs.

2.5 The Developments of Human Rights at International Level

The above discussion was devoted to highlight the philosophical or religious and politico-legal ideas which supported the concept of human rights, without referring to the term as such. Having mentioned the rich heritage of these rights, now I will discuss the international developments towards concretization of these rights. In modern times, the humanity was subjected to tough challenges during the World Wars. The damage done during the First World War was tried to be compensated by the Treaty of Versailles in 1919. One of the efforts made by this treaty was the establishment of the League of Nations. The League in its Covenant created the International Labour Organization (ILO). This organization is understood to have made initial efforts to institutionalize human rights, more

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British and in 1787 a new Constitution was drafted for America. In 1791 the American Bill of Rights was ratified. America inspired the French and in 1789 the Declaration of the Rights of Man and Citizen was adopted followed by the Declaration of the Rights of Woman and Citizen in 1790. Available at: http://www.murdoch.edu.au/elaw/issues/v9n3/reece93.html. Visited on 14 January 2010.

particularly the economic, social rights of the labour class. I begin by discussing the role of the League of Nations, the predecessor of the UN in the promotion of human rights.

2.5.1 The League of Nations and Human Rights

At international level, the first steps to institutionalize human rights were taken by the League of Nations. The League of Nations was established through the Treaty of Versailles in 1919 in response to the horrors of the First World War.\(^8\) Article 13 of the Treaty of Versailles provided for the establishment of the ILO, which was adopted as an independent treaty, and had set the following agenda regarding “humane conditions of labour” for the organization.\(^8\)

The ILO was finally established by the Treaty of Versailles on 14 December 1919 as an autonomous body of the League. The ILO was then kept as a special wing of the League of Nations. The League of Nations was founded immediately after the First World War. The Covenant of the League\(^9\) provided for three main constitutional organs: the General Assembly, representing all the member States, an Executive Council,\(^9\) with membership limited to major powers and a permanent Secretariat.\(^9\)

Out of all the organs of the League of Nations, it was mainly the ILO which carried out the activities relating to human rights.\(^9\) The ILO adopted a range of Conventions and recommendations aimed at a standard setting international labour law and policy.\(^9\) It also was the first international body to launch a

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\(^8\) Joseph Wronka, 2008, p. 62.

\(^8\) Michael Haas, 2008, p. 60.


\(^9\) Michael Haas, 2008, p. 60.

complaint mechanism under Article 26 of the constitution of the ILO.\textsuperscript{94}

It is beyond doubt that the motivation and inspiration behind the establishment of the ILO came from the human rights approach. The Preamble to the ILO Constitution begins with the intriguing words which say: ‘Whereas universal and lasting peace can be established only if it is based upon social justice.’ These words suggest that the prime focus of the ILO was on the protection of the economic and social rights which later got categorised as the Second Generation human rights.

The ILO survived the League and became a member of the United Nations (UN) system after the discontinuation of the League in 1946\textsuperscript{95}. Another reason to discuss the ILO in this study is that ILO has also been quite helpful in regional developments.\textsuperscript{96} However, the most important works for the promotion of human rights were done by the successor of the League, that is, by the United Nations. I have discussed the role of the UN in the following paragraphs.

\textbf{2.5.2 The United Nations (UN) and Human Rights}

After the Second World War, the need for an international argumentation to avert similar tension was felt even stronger. It was only after the birth of the UN in 1945 that the nations started thinking in terms of human rights and the UN was successful in launching a human rights movement.\textsuperscript{97}

The growth of the UN began in 1941 with the Declaration of St. James Palace. And the final shape to it was given in the San Francisco Conference in 1945. The overview of the four years of developments towards the UN has been given below.

The first step towards the establishment of the UN was the Four Freedoms given


\textsuperscript{96} For example the Ohlin Report in case of Europe. This report laid foundations of the EEC in Europe. Therefore, it is relevant to have discussed this organization for a study like this, which is devoted to regional human rights systems.

\textsuperscript{97} Joseph Wronka, 2008, p. 62.
by Franklin D. Roosevelt, the President of the United States which he mentioned in his famous speech\textsuperscript{98} to the Seventy-Seventh Congress on 6 January 1941. In this speech, he highlighted the ‘Four Freedoms’ in which he considered the freedom of speech and expression, freedom of worship, freedom from fear and the freedom from want. These four freedoms were known to be the objective of the UN.\textsuperscript{99}

The next development towards the establishment of the UN was the Declaration of St. James Palace, 1941, also known as the London Declaration. It was signed on 12 June 1941 by the delegates of the Great Britain, Canada, Australia, New Zealand, Union of South Africa and some from the United Governments. The Declaration was signed at the ancient St. James Palace.

The next step was the adoption of the Atlantic Charter in August 1941, two months after the Declaration of St. James Palace. This Charter was neither a treaty nor a declaration, it was only a consent to a set of principles.\textsuperscript{100} On 1 January 1942, the United Nations Declaration was adopted as the next step towards the making of the UN.

The Moscow Conference was held on 30 October 1943, and the Moscow Declaration\textsuperscript{101} proposed a ‘general International Organization based on the principle of sovereign equality of all peace loving States. . .’\textsuperscript{102} The purpose of this conference was to further define the UN as an organization. The Declaration,


\textsuperscript{100} One of the eight points of the Charter mentioned non-aggression and another point proposed a new association of nations. This declaration was signed on 24 September by the USSR and the nine governments of occupied Europe: Belgium, Czechoslovakia, Greece, Luxembourg, the Netherlands, Norway, Poland, Yugoslavia and by the representatives of General de Gaulle, of France. For further details, see: Michael Haas, 2008, p. 73. Also, see: http :// www. un. Org / en / aboutun / charter / history / atlantic. shtm. Visited on 29 January 2010.


\textsuperscript{102} Michael Haas, 2008, p. 74.
for the first time, articulated basic principles of UN peace and security. This conference was followed by the Moscow Declaration on Atrocities on 1st November, 1943.\textsuperscript{103} This declaration was also signed in the Moscow Conference. In this conference Winston Churchill, F.D.R. Roosevelt and Joseph Stalin proposed the post war trials of the Nazis for atrocities, massacres and cold-blooded mass execution.\textsuperscript{104} The importance of this Declaration was that it showed the retrospective concern of the community of Nations and that these countries were trying to set examples for deterring other states for any violations of human rights and peace in future.

In the same year, the Tehran Declaration came up. Continuing the efforts towards the establishment of the UN, Roosevelt, Statin and Churchill met in Tehran, Iran, in December 1943. The Moscow Declaration was emphasized during this conference. The Declaration read:

\begin{quote}
‘We are sure that our concord will win an enduring peace. We recognize fully the supreme responsibility resting upon us and all the UN to make a peace which will command the goodwill of the overwhelming masses of the peoples of the world and banish the scourge and terror of war for many generation’.\textsuperscript{105}
\end{quote}

Meanwhile, a Polish lawyer named Raphael Lemkin coined the word genocide,\textsuperscript{106} to refer to the Nazi Germany's acts during the Second World War. It was important to seek an international trial of the Nazi soldiers for the war crimes they committed because it meant that crimes against humanity and on such a scale cannot be ignored by the international community as a matter of state sovereignty.\textsuperscript{107} It also hinted upon the punitive aspect of violation of peace and human rights of the innocent people, even if it is at the hands of the State. It was also an indication of the simultaneous growth of humanitarian and human rights law. Both these branches of international law have given unprecedented

\textsuperscript{104} Michael Haas, 2008, at p. 76.
\textsuperscript{107} Michael Haas, 2008, p. 76.
importance to an individual who otherwise had no role to play in so-called Laws of the Nations.

As the UN Charter was very near to be actually drafted in 1944, the Dumbarton Oaks Conference was held at a private mansion named Dumbarton Oaks. The delegates of Britain, USSR, China and the United States met here. The purpose was to design the UN on the lines of principles and proposal put forward in conferences of the past. The discussions were carried on during the series of meetings held between August and October 1944, and a proposal for the structure of the world organization was submitted by the four powers. 108

The next event was the Yalta Conference, from 4-11, February 1945, at Yalta, Crimea. The question of voting procedures for the Security Council, was also discussed. 109 The conference concluded by announcing that there will be a conference of the UN to be held at San Francisco on 25 April 1945.

The ‘Big Three’, that is, the Soviet leader Joseph Stalin, the British Prime Minister Winston Churchill, and the U.S. President Harry Truman met in Potsdam, Germany, from July 17 to August 2, 1945 to negotiate terms for the end of the Second World War. 110 One of the articles in the Declaration reiterated the atrocities of 1943. 111 It said: “justice shall be meted out to all war criminals

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108 According to the Dumbarton Oaks proposals submitted in October 1944, the UN was planned to have: a General Assembly, a Security Council, the International Court of Justice and a Secretariat. An Economic and Social Council was also provided for under the General Assembly. The matter regarding voting procedures for the Security Council was left undecided in this conference. In this conference only one reference was made to human rights. Available at: http://www.un.org/en/aboutun/charter/history/dumbarton.html. Visted on 29 January 2010. Also, see: A. H. Robertson and J.G. Merrills, 2005, p. 26.

109 It was resolved that, all decision on question of procedure should be taken by a majority of seven votes and that decisions on other question should be taken by a like majority with the added requirement of unanimity of the permanent members. It was also provided that a party to a dispute should abstain from voting. Available at: http://www.un.org/en/aboutun/charter/history/dumbarton.html. Visted on 29 January 2010. Also, see: A. H. Robertson and J.G. Merrills, 2005.


111 Michael Haas, 2008, at p. 70.
including those who have visited cruelties upon our prisoners.’  

It was a very crucial parallel movement to secure human rights with a retrospective look. It was being very well reported by the prospective initiatives to promote human rights and peace by way of the UN.

The pre-decided San Francisco Conference also known as the UN Conference on International Organisation (UNCIO) was held on 25 April 1945 to discuss the proposals for the UN from Dumbarton Oaks and Yalta Conferences along with the individual proposals of the other States. The Conference continued for two months in full sessions and carried on by small committees and resulted in the drafting of 111 Articles of the Charter of the UN. A lengthy debate on the Veto rights of the Permanent Five Members of the Security Council was held. The last session of the conference was held on 25 June, 1945 and the Charter was passed unanimously and signed by Fifty One States. The UN came into existence on 24 October 1945, with five plus twenty four ratifications. Several States emphasized on human rights issues to be included in the UN’s Charter.

The human rights concern can be seen throughout in the UN Charter which highlights that the rights of an individual are no longer a concern for only the

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112 In the same year the agreement for the persecution and punishment of the major war criminals of the European Axis and the Charter of the International Military Tribunal were signed. In addition to war crimes based on Geneva and Hague Conventions, some new crimes were coined for example crimes against humanity’ and ‘crimes against peace’. For further details, see: Michael Haas, 2008, at pp. 77-79.


114 Panama, Chile and Mexico proposed adoption of a declaration on the rights and duties of nations and a declaration on the essential rights of man. Due to lack of time Panama submitted a Draft Declaration on Rights and Duties of States and a draft Declaration on Fundamental Human Rights and Freedoms to the first session of the General Assembly. These drafts were later provided to the Commission on Human Rights assisting the Drafting Committee. Uruguay and Cuba wanted to omit the General Assembly to the adoption of human rights documents after the conference. For further details, see: Alfredson Gudmundur and Asbjorn Eides, The Universal Declaration of Human Rights: A Common Standard of Achievement, Kluwer Law International, 1999, pp. 2-11, at p. 4.

115 The Preamble of the UN Charter, Article 1, Article 13, Article 55, Article 56, Article 62, Article 68, Article 76. Also, see: Joseph Wronka, 2008, p. 63.
The charter is dedicated to the achievement and observance of human rights and fundamental freedom, unless we can attain these objectives for all men and women everywhere without regard to race, language or religion, one cannot have permanent peace and security in world.\footnote{Available at: http://www.presidency.ucsb.edu/ws/index.php?id=12188#axzz1tJkDTjLx. Visited on 20 October 2009.}

It was suggested during the San Francisco Conference to substitute the word ‘respect for human rights’ with stronger word ‘observance’ of these rights’. In place of ‘promoting’ words like ‘assuring’ or ‘protecting’ were proposed. However, these suggestions were not accepted.\footnote{L.B. Sohn, \textit{A Short History of UN Documents on Human Rights}, The United Nations Publication, New York, 1968, pp. 51-52. Also, see: A.H. Robertson and J.G. Merrills, 2005, p. 25.} The implication of such terms will be highlighted in the discussion ahead as well as in other chapters.

The Charter laid down a full-fledged system of human rights monitoring with the help of the various provisions in the Charter itself. An overview of one of the monitoring systems of human rights monitoring, the Charter based human rights monitoring of the UN is given below.

\subsection*{2.5.2.1 The Universal Declaration of Human Rights, 1948}

The United Nations first document on human rights was the Universal Declaration on Human rights which came on 10 December 1948. It is till date considered the ideal document on human rights and it includes a spectrum of human rights in it. The UDHR is greatly followed and acknowledged by the other human rights related documents and has been the inspiration behind all the regional conventions on human rights. The trajectory of the UDHR actually precedes that of the United Nations since the debate over such a declaration began in 1941 when Mrs. Eleanor Roosevelt floated the idea.\footnote{For further details, see: Shveta Dhalwal, “Sixty Years of UDHR: A Journey from Universalization to Regionalization”, Pravin Parekh, (ed.), \textit{Human Rights Yearbook 2008}, Parekh and Parekh Publications, 2008, pp. 215-231.} The UDHR was adopted unanimously by the United Nations’ fifty one members on 10 December.
1948. The date is now known as the Human Rights Day all over the world. The declaration has thirty Articles including civil, political as well as the social, economic and cultural rights. Article 29 hints upon group rights although very vaguely. During the drafting of the UDHR mostly the western scholars and leaders took part or the leaders from powerful countries like China, therefore, the Declaration faced a criticism that it failed to accommodate the voices of the developing countries hence disproving the word ‘Universal’. There also emerged a political argument which explained that the UDHR was unanimously adopted by all the member countries of the United Nations since it was non-binding in nature. This reasoning was further strengthened when the one observes that it took ten years to bring into force the Conventions of the United Nations, that is, the Covenant on Civil and Political Rights, 1966 and the Covenant on Economic, Social and Cultural Rights, 1966. Both the Covenants came into force after ten years in 1976 after they received the required number of thirty five ratifications. The UDHR was a beginning of the new era of human rights regime as it was followed by the treaty based initiatives of the United Nations to protect and promote human rights. The wave for human rights did not stop here and it went on to establishment of regional regimes of human rights. Therefore, the contribution of the UDHR is beyond any measurement and beyond any doubt. Since the UDHR was a declaration and had not enforcement mechanism behind it we will study the human rights mechanism of the United Nations under the Charter based or the treaty based human rights systems of this organisation.

2.5.2.2 The Charter Based Human Rights Monitoring Under the United Nations

As seen above, the UN Charter gives references to human rights in many ways. It also assigns various organs of the UN to perform role for the human rights in some unique way. The major organs of the UN include the General Assembly, the Security Council, the Secretariat, and some significant subsidiary bodies like the Economic and Social Council and the youngest of all, the Human Rights Council. This part of the chapter deals with all these UN organs with respect to their role in implementation and promotion of human rights.

The General Assembly of the UN is the most important and most democratic organ of the organization. It comprises of all the members of the UN as mentioned in Article 9 of the Charter. All the UN General Assembly’s members
have one vote of equal importance according to Article 18 of the Charter. The UN General Assembly derives most of its powers from the Articles 10-14 of chapter IV of the Charter. In these provisions, the UN General Assembly’s powers are described with words like initiate studies, recommend, promote, encourage and discuss. And from the discussion that follows, it will become quite clear that the UN General Assembly has been doing justice to these words used in its reference in the Charter.\textsuperscript{119}

Article 10 empowers the UN General Assembly to ‘discuss any question or any matter within the scope of the present Charter . . . makes recommendations to the members of the UN. . . .’ Article 13 particularly gives the mandate to the UN General Assembly to make recommendations for the purpose of ‘assisting in realisation of human rights’. The UN General Assembly has contributed to the growth of human rights movement by way of its committees as well. The role of the Social, Humanitarian and Cultural Committee, better known as the Third Committee, in shaping and final adoption of the Covenants has been very crucial.\textsuperscript{120}

The UN General Assembly is not only the apex body for the Charter based organs of the human rights monitoring system but also for the treaty based bodies like the Human Rights Committee and the Economic and Social Council etc. In 2006, by the UN General Assembly Resolution 60/251, the Human Rights Council was established to replace the Commission on Human Rights. The Human Rights Council is the subsidiary body to the UN General Assembly and not to the Economic and Social Council as its predecessor, the Human Rights Commission. Moreover, the UN General Assembly plays the role of a Parliament of the world where all the human rights concerns are expressed and solutions to the problems are given in the shape of resolutions.

The UN General Assembly symbolizes democracy and equality at international


level; which are the two basic pre-requisites for the enjoyment of human rights. The UN General Assembly has taken note of socio-political situations around the world which could cause serious threat to the respect of human rights and took several initiatives by way of resolutions to address these situations.\textsuperscript{121}

The second body to support human rights monitoring is the Security Council. This is the only organ of the UN which can take enforcement actions on a situation, including human rights. The Security Council of the UN is one of its main bodies. Articles 23-27 of the chapter V of the Charter speaks about this body of the UN that 'the Security Council is the only UN body with any 'real' enforcement potential.'\textsuperscript{122} This is the only body to which the UN Charter applies the word 'enforcement'.\textsuperscript{123}

The direct involvement of the Security Council in the matters relating to human rights was not observed until the mid 1990s. However, at present, its role in the field of human rights has become increasingly significant.\textsuperscript{124} It is becoming more involved in decisions relating to human rights. This holds particularly true for peacekeeping and peacemaking initiatives, for example, in Angola, Burundi, A


\textsuperscript{123} Article 45 of the U. N. Charter.

Cambodia, etc. The Security Council has dealt with human rights violations of the South African apartheid; Israel and the population of occupied territories; and Iraqi atrocities against civilian population. Article 24 of the U.N. Charter confers on the Security Council primary responsibility for the maintenance of international peace and security. Articles 39, 41, and 42 of the UN Charter deal with action which may be taken by the Security Council in order to counter threats to peace. It is to be noted here that threat to peace and security essentially raise concerns for human rights. Therefore, the Security Council takes care of the human rights while performing its role in the protection of international peace and security.

The UN Security Council can deal with such threats in two ways as mentioned in the chapter VI, one is by peaceful means and the other is by taking 'enforcement' action. The first kind of means are mentioned in Article 41 of the Charter and includes calling upon the Member States to apply economic sanctions, interrupt communications and sever diplomatic relations with the concerned violator State. Such sanctions are duly adopted by way of the UN Security Council Resolutions. It is only if these methods fail or are considered inadequate, the Security Council may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security under Article 42 of the Charter.

However, these measures are launched only by way of a special agreement as provided for in Article 43 of the Charter. No such agreement has been made till


date. The second way in which the UN Security Council promotes respect for human rights is through Article 33. In Para two of the Article, the Security Council may suggest States to resolve their problems by peaceful means.\textsuperscript{127} Article 34 empowers the Security Council to investigate any dispute.\textsuperscript{128} Such investigation is carried out by a subsidiary organ or a committee of the Security Council. The Council under the provisions of Article 36 may also offer its good offices and recommend ‘Appropriate Measures’ to the parties at dispute by calling the provisions of the Article 33. All these measures adopted by the Security Council from time to time, strengthen human rights all over the world.

The next organ of the UN involved in the promotion and protection of human rights is the UN Secretariat.\textsuperscript{129} The Secretariat does so primarily through its Office of the High Commissioner for Human Rights (UNHCHR) in Geneva.\textsuperscript{130} The office is headed by the High Commissioner, who is the UN’s senior most official responsible for human rights monitoring.\textsuperscript{131}

\textsuperscript{127} As an example on 28 September 1980 the United Nations Security Council Resolution adopted a Resolution 475 requesting Iran and Iraq to peacefully settle their disputes. Also in Article 37 in its Para one provides that in case efforts for a peaceful settlement fails the States at the dispute may refer to the UNSC making use of the Article 33.

\textsuperscript{128} Such investigations were carried out by the United Nations Security Council Resolution in 1946 in the Spanish matter, in 1948 in the indo-Pak matter, in 1975 on the Western Sahara issue, in 1992 on Boipatong killings in South Africa.

\textsuperscript{129} Chapter XV of the Charter provides details related to the Secretariat. Article 97 says that the Secretariat is to be headed by a Secretary General, who is the Chief Administrative Officer of the UN. The Secretary General is elected by the simple majority of the General Assembly as per the rule 141 of the Chapter XV. The Charter however, is silent on the term of this office. The difference in the term can be seen in each of the Secretary General’s term: Trygve Lie of Norway (1946-1952), Dag Hammarskjöld of Sweden (1953-1961), U Thant of Myanmar (1961-1971), Kurt Waldheim of Austria (1972-1981), Kurt Waldheim of Austria (1972-1981), Boutros Boutros-Ghali of Egypt (1992-1996), Kofi A. Annan of Ghana (1997-2006). Available at: http://www.un.org/sg/formersgs.shtml. Visited on 12 January 2010. Also, see: Henry Steiner and Philip Alston, 2000, p. 599.

\textsuperscript{130} United Nations General Assembly Resolution 48/141, 1993.

\textsuperscript{131} The rest of the staff is appointed by the Secretary General in accordance with the rules established by the General Assembly in Article 101. The role of the Secretary General has been very crucial in all the UN affairs including human rights. In 1956 the then Secretary General Dag Hammarskjold visited the prisoners of war of the American-Korean war and lead to a general
The UNHCR has three branches. First is the Research and Right to Development Branch. It is concerned with human rights policy development and research for UNHCR. The Second is the Support Services Branch which provides support to both the Treaty based and the Charter based human rights bodies and organs. The Third is the Activities and Programmes Branch which supports special procedures relating to situations of human rights in particular countries or on thematic issues.\(^{132}\)

In addition to these organs, there are some other organs also which work for the promotion of human rights under the UN. The Economic and Social Council (ECOSOC) plays an important role in the UN system for human rights. The ECOSOC was provided for in the Charter itself ‘to promote social progress and better standards of life in larger freedoms’ as per Article 1 of the Charter. Further, Article 61 of the Charter lays down the provisions for the ECOSOC.

The ECOSOC may initiate studies,\(^{133}\) make recommendations,\(^{134}\) prepare drafts of the conventions,\(^{135}\) may call international conferences\(^{136}\) may seek reports on the follow up on its recommendations\(^{137}\). The Council has also established regional commissions according to UN General Assembly resolution 46(1), 11 December 1946. These are:

The Economic Commission for Europe (ECE) 1947, Economic and Social
Commission for Asia and Pacific (ESCAP) 1947, Economic Commission for Latin America and the Caribbean (ECLAC) 1948, Economic Commission for Africa (ECA) 1958, Economic and Social Commission for Western Asia (ESCWA) 1973. The presence of these regional commissions shows the attention given to the regions under the UN regime and hence a supportive argument for this study. The Economic and Social Council has been exemplary in adopting different means for the monitoring of human rights. The Economic and Social Council offers advisory services to the states on request. States are provided with educational and informational assistance so that they can observe high standards of human rights protection and promotion.\(^{138}\) The Commission can also request assistance from the Office of the High Commissioner for Human Rights. This includes seminars and training courses as well as advice from experts.\(^{139}\) The methods invented by the ECOSOC have strengthened the enforceability of human rights. Some of the measures are categorized as the Permanent Procedures while others are known as the Special Procedures.

The Permanent Procedures are of two kinds and are known as the 1235 Procedure and 1503 Procedure respectively. The 1235 Procedure was established in 1967 by ECOSOC Resolution 1235 (XLII), and is named after the number of this resolution. It gives legitimacy to the two types of the UN activities; firstly, it allows for the holding of an annual public debate by which both governments as well as NGOs bring to light certain country-specific situations that require the Commission's attention. Secondly, it involves studies of situations or particular cases through use of appropriate techniques.\(^{140}\) Keeping in view the shortcomings of the 1235 Procedure, a new procedure was laid down in 1970 to support the existing one and it was the 1503 Procedure which is named after the Economic


\(^{139}\) ibid., p. 54.

\(^{140}\) However, in 1976-77 it was observed that the Commission could not use this procedure in various cases of human rights violation, for example; in Cambodia under the Pol Pot’s regime, in Uganda under the rule of Edi Amin, Central Africa under Bokassa, Equitorial Guinea under Macia, Argentina under the military rule to name a few. For further details, see: Henry Steiner, Philip Alston and Ryan Goodman, 2008, p. 760.
and Social Council Resolution number 1503 (XLVIII) of 1970.

The Procedure was adopted to authorise the Commission to examine the communications pertaining to ‘situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring considerations of the commission’.\textsuperscript{141} This is a confidential procedure. Under this procedure, the State consent is not required for an investigation to take place. After investigation has been completed, the Commission then decides what action should be taken.\textsuperscript{142}

If the 1503 Procedure fails to improve the situation, then the Commission can invoke the 1235 Procedure by which it can hold a public debate to discuss the issue in question and to bring international shame to the offender. If the situation continues to persist, then the Commission can move Economic and Social Council to pass a resolution condemning the violators.\textsuperscript{143} The shroud of confidentiality of the 1503 Procedure has met with strong criticism.\textsuperscript{144} Despite all the criticism, the 1503 Procedure has been retained by the Human Rights Council which succeeded the Commission on Human Rights in 2006.

In addition to the Permanent Procedures, there are some "Special Procedures" adopted by the UN System. This is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in

\textsuperscript{141} Henry Steiner, Philip Alston and Ryan Goodman, 2008, p. 754.


\textsuperscript{143} ibid. In mid 1980’s the number of communications received by the Commission under 1503 Procedure were around 25,000 and it rose to 3’00’000 by 1993. Also see: Henry Steiner, Philip Alston and Ryan Goodman, 2008, p. 755.

\textsuperscript{144} For example, ‘in the mid-1970s, Amnesty International asserted that the confidentiality of 1503 was ‘an undisguised stratagem for using the UN, not as an instrument for promoting and protecting and exposing large scale violations of human rights, but rather for concealing their occurrence’.\textsuperscript{144} However, one must also consider that it is this shield of confidentiality that facilities the engagement of governments in the process. This procedure helps to increase the pressure on violating governments to correct the offending situation. For further details, see: Frank Newman and David Weissbrodt, \textit{International Human Rights}, Anderson Publishing, Cincinnati, 1990, pp. 122-123.
all parts of the world. Currently, they can be either thematic or country specific. Special Procedures are either an individual (called "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert") or a working group usually composed of five members; one from each region. Some countries have issued "standing invitations", which means that they are, in principle, prepared to receive a visit from any special procedures mandate holder. Under the fact finding, international human rights monitors try to ascertain what is going on in a situation and to submit reports in relation to the human rights standards.

A fact-finding mission may be initiated for country-specific mandates. This requires individuals with relevant expertise to study the situation at hand and to gather information. It is important to note that a fact-finding mission can be undertaken only with the consent of the State in question. In 2006, the then Secretary General of the UN, Kofi Annan described the Special Procedures (SPs) as 'the jewel in the crown of the [UN human rights] system'. The issue of cooperation with regional human rights mechanisms was discussed at the 14th Annual Meeting of the Special Procedures, introduced by the special rapporteur.

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146 id.

147 id.


149 In 1970 the Secretary-General issued Draft Model Rules of fact-finding procedure for UN bodies dealing with violations of human rights. Although these Draft Model Rules were adopted in 1974 by the Economic and Social Council of the UN. The General Assembly of the UN has also adopted a resolution on fact Finding. There are many other sources to fact finding procedures, for example, the first international codification of fact-finding procedure was the Hague Convention for the Pacific Settlement of Disputes of 1907. See: Declaration on Fact-finding by the UN in the Field of the Maintenance of International Peace and Security adopted by GA/RES/46/59, 9 December 1991. Available at: http://www.un.org/documents/ga/res/46/a46r059.htm. Also, see: Training Manual on Human Rights Monitoring. Available at: http://www1.umn.edu/humanrts/monitoring/chapter18.html. Visited on 12 July 2010.

Rodolfo Stavenhagen.¹⁵¹ Hence, these UN techniques to counter human rights violations are serves as a link with the regional monitoring systems.

I will deal with some inter-relationships in subsequent chapters in order to establish the argument that the regional mechanisms are not contrary to the universal human rights regime. Rather they complement it. Another special procedure available to the Commission is a Thematic Mechanism. Each mechanism focuses on a particular 'theme' or genre of violations rather than on a particular country¹⁵², and working groups, along with Special Rapporteurs, investigate human rights violations at a multi-State level. The Thematic Mechanisms are also helpful to enhance the understanding and awareness regarding human rights by providing information on the human rights issues and their ground realities.

2.5.2.3 The Human Rights Council

“If the UN is to meet the expectations of men and women everywhere - and indeed, if the Organization is to take the cause of human rights as seriously as those of security and development - then Member States should agree to replace the Commission on Human Rights with a smaller standing Human Rights Council.”¹⁵³

The Human Rights Council is the latest development of the UN Human Rights Monitoring. It replaced the sixty year old Commission on Human Rights on 15 March 2006 during the 72nd Plenary Meeting of the UN General Assembly with the adoption of Resolution 60/251. One of the main reasons behind having a new body for International Human Rights monitoring was the growing inefficiency of the Commission as mentioned above. On 18 June 2007, the Council adopted its “Institution-Building Package” in which it provided for the Universal Periodic Review on the basis of (a) The Charter of the UN; (b) The Universal Declaration of Human Rights; (c) Human rights instruments to which a State is party; (d) Voluntary pledges and commitments made by States, including those undertaken


¹⁵² For the list of Thematic Mandates, see: http:/ /www2 .ohchr .org/ english/ bodies/ chr/ special/ themes. Htm. Visited on 13 January 2010.

when presenting their candidatures for election to the Human Rights Council.\textsuperscript{154} The objective of the Universal Periodic Review was to promote the universality, interdependence, indivisibility and interrelatedness of all human rights.\textsuperscript{155} It also included provisions on the selection of mandate holders and the review of all special procedures mandates. June 2007, the Council also adopted Resolution 5/2, containing a Code of Conduct for special procedures mandate holders. At the annual meeting of Special Procedures in June 2008, Special Procedures mandate holders adopted their Manual, which provides guidelines on the working methods of Special Procedures. At the same meeting, they also adopted an Internal Advisory Procedure to review practices and working methods and also the complaint procedure were discussed.\textsuperscript{156} The Human Rights Council has rejuvenated the UN system by introducing new mechanisms like the Universal Periodic Review\textsuperscript{157} and by improving the already existing mechanisms like the Permanent and the Special Procedures.

There are several other human rights monitoring bodies under the UN, for example, The Commission on the Status of Women was established in 1946. It reports to Economic and Social Council on policies aimed at promoting women’s rights in the socio-economic, political, and educational fields.\textsuperscript{158} It plays a significant role both in standard-setting, as well as, in the development of further relevant instruments.\textsuperscript{159} The Permanent Forum on Indigenous Issues was established in July 2000 by Economic and Social Council. It is composed of 16 members.\textsuperscript{160} This UN body breaks new ground as it formally integrates indigenous peoples into the UN.


\textsuperscript{155} \textit{id.}

\textsuperscript{156} Available at: www.fasngo.org/.../ The %20 Human%20 Right %20 Council %20 and %20 its %20 Special. Visited on 23 January 2010.

\textsuperscript{157} The Universal Periodic Review was created through the UN General Assembly on 15 March 2006 by resolution 60/251. Available at: http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx. Visited on 23 January 2010.

\textsuperscript{158} Henry Steiner, Philip Alston and Ryan Goodman, 2000, p. 598.


2.5.3 *The Treaty Based Human Rights Monitoring of the United Nations*

This branch of UN human rights monitoring is based on the UN human rights treaties. All the treaties provide for an enforcement body which is known as the treaty body which is responsible for the compliance of the treaty provisions by the States parties. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were the first UN human rights treaties and the Human Rights Committee was the first treaty body. The then Commission on Human Rights was mainly responsible for the drafting and revisions of the two Covenants on Human Rights. Therefore, it had a very important role in both kinds of monitoring regimes of the UN. Before I discuss the monitoring system of the Covenants, I would give a brief overview of how the Covenants were drafted and what problems came across during the process.

The Commission on Human Rights in its Second Session had drafted a Covenant which unlike the Declaration would be binding on States. The Covenants were opened for signature on 19 December 1966 and required thirty five ratifications to come into force. The Optional Protocol was also approved in the same year and required the ratification to come into force. It was enforced along with the Covenant. On 15 December 1989, the General Assembly adopted the Second Optional Protocol. It also required ten ratifications and it came into force on 11 July 1991.

2.5.3.1 *Monitoring Under the International Covenant on Civil and Political Rights, 1966*

The International Covenant on Civil and Political Rights consists of 53 Articles and is divided into six parts. The first three parts are devoted to rights and freedoms and the last three highlight the implementation procedures. It needs special mention here that the States parties to the Covenant may take measures to derogate from their obligation under the Covenant to the extent strictly required by the exigencies of the situations under clause 2 of the Article 4, the Covenant provides for non-derogable rights.\(^{161}\) Part IV of the ICCPR lays down the various

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\(^{161}\) These are right to life Article 6, freedom from inhuman as degrading treatment Article 7, freedom from slavery slave trade in Article 8(1) and servitude Article 8(2), freedom from imprisonment
procedures to ensure due implementation of the Covenant. The Treaty Body for the Covenant to monitor the compliance of the provisions therein is provided for in the Covenant itself. This Treaty Body is Human Rights Committee. It comprises of eighteen members. All the members serve in their individual legality and there are no two members from one State party to the Covenant in this committee. The term of these members is four years and they can be re-elected. On 20 September 1976 thirty eight states party to the Covenant elected eighteen members of the committee and there term duration began from 1 January 1977. The role and functions Human Right Committee is very well laid down in the Covenant. The Committee adopts four methods to monitor and ensure the monitoring of the Covenant. These are explained below:

2.5.3.1.1 The State Reporting Procedure

The Article 40 of the ICCPR in its Para 1 mentions that the State parties must ‘undertake to submit reports’ on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights. This is one of the compulsory mechanisms adopted by the committee, within one year ratifying the Covenant, a State is required to submit its report on the State's initiatives to incorporate the Covenant's provisions, their territory and for their people. The report is to be submitted to the Committee through the Secretary General of the UN. Although non-reporting is a violation of the Article 40 of the Covenant, the response of the States towards it has been for inability to fulfil a contractual obligations Article 11, non retroactive application of criminal law Article 15, right to recognition as a person before the law Article 16 and freedom of thought, conscience and religion Article 18. These provisions have been identified as ‘Core Essential Human Rights’.

162 The Economic and Social Council of the UN in its Resolution E/Res 624 B, (XXII), adopted on 1 August 1965, proposed the idea of State Reporting system and it was then applied in the International Convention on Elimination of All Forms of Racial Discrimination (ICERD) and the two International Covenants. Also see: UN Office of the High Commissioner for Human Rights, Fact Sheet No. 30, The UN Human Rights Treaty System: An Introduction to the Core Human Rights Treaties and the Treaty Bodies, June 2005, No. 30. Available at: http://www.unhcr.org/refworld/docid/479477490.html. Visited on 29 January 2010.

quite discouraging. The reports are normally late, poorly written and sometimes not submitted at all.\footnote{164}{It is important to note that the Vienna Convention on Law of Treaties of 1969 in the Article 26 lays down that every State party must perform their treats obligations in good faith.}

The reporting system is also weak due to complex matters of the reports which lead to the postponement of consideration in one session. Moreover the State is unchecked for the details they provide in reports as they are unquestionable due to sovereign status. The governments were not passed in the first four years of the committees. The State has to submit the initial report within one year of its becoming a party to the Covenant and there after every four years the report is to be submitted.

2.5.3.1.2 The Inter State Communication System

Article 41 of the Covenant laid down the procedure for bilateral communications by the States to the commission. Originally this clause was kept as mandatory part of the Covenant; however, the Third Committee of the UN General Assembly recommended it to be made into an optional clause. The article reads, ‘A State party . . . may at any time declare . . . that it recognizes the competence of the Committee to receive and consider communications to the effect that a State party claims that another party is not fulfilling its obligation under the present Covenant’. Such communications must be made in writing to the Commission but it can be filed only if the alleged Violator State has ‘declared’ the acceptance of this clause of the Covenant.

Also such a communication would be entertained after all the domestic remedies have been exhausted by the Complainant State. There is a provision for oral and written representation before the committee. At this stage the committee offers its good offices for amicable settlements.\footnote{165}{In case such settlement is not achieved the Committee prepares a report with minimum comments on the facts of the case and the record of oral and written hearings. The Inter-State communication procedure was enforced in 1979 when the required number of States made declarations in its favour.} Therefore, the chances for these States to approach human rights committee are rare. It highlights the regional impact over the international monitoring of human rights, an argument supporting the subsequent chapters. Article 42 provides for Conciliation Procedure for
settlement and it is subject to the consent of the States at dispute. The European System of Human Rights is discussed in detail in a subsequent chapter.

2.5.3.1.3 The Individual Communication System

The most important feature of human rights law is that it has brought the individual in the subject matter of international law. Earlier the State was the ultimate protector of its people and its people had no *locus standi* before international tribunals and international organizations. In case of human rights where the State has all the reasons and means to violate these rights, could not be expected to protect these against it, since the State is *ex hypothesi* offender.

The individual communication procedure was proposed by the Netherlands to the Third Committee as an optional clause. These proposals were influenced by the European convention which is discussed separately in this study. Once it was decided to have such procedure, the question of keeping it optional or mandatory arose. Lebanon was one of the countries which favoured its inclusion in the Optional Protocol. This proposal was adopted by forty one votes to thirty nine with sixteen abstentious.

The procedure for these communications is also very well laid out. The communication has to be in writing, all available domestic remedies must have been exhausted before the communication is made and the same matter should not be under any other international procedure at the same time and the complaints must not be anonymous. The whole procedure is very time consuming and expensive. Verification of the facts and delay in the responses from the governments further makes it complicated.

In addition to the methods explained above, the Committee has developed a trend of General Comments. The Committee was to send to the States its comments on

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167 *id.*
168 Among the Abstentions were: Brazil, China, Cyprus, Greece, Israel, Turkey.
170 Article 2 of the Optional Protocol and Article 5(2) of the Optional Protocol to the Covenant on Civil and Political Rights, 1966.
171 Article 4 the Optional Protocol to the Covenant on Civil and Political Rights, 1966.
the human rights situations as it finds appropriate. By voting the word General was added as suffix to make the term to be ‘General Comment’\textsuperscript{172}, obviously to soften the tone and therefore the effect of the comments.

2.5.3.2 Monitoring Under the International Covenant on Economic, Social and Cultural Rights, 1966

As we observed in the preceding discussion the Civil and Political Rights were understood to be different and superior from the economic social and cultural rights; most probably because these rights were concerned with internal and sensitive matters of a State.

At the International Institute of Human Rights, Strasburg, France, Vasak coined the three generations of human rights calling the CPRs as the first generation, the ESCRs as the second and the solidarity rights as the third generation. This distinction was purely derived from the slogan of French Revolution Liberty, Equality, Fraternity. The authenticity of this classification is questioned by scholars like Dinah Shelton.

The fact that the first few articles of the two Covenants were kept as similar hints upon the similar nature of the rights enshrined in the two Covenants. For example, Article 1 in both the documents provides for right to self determination to all the peoples of the world. The next Article 2 in its Para 1 provides for the obligation of the States. Article 2(1) reads as follows:

> Each State party to the present Covenant undertaken to take step individually and through international assistance and co-operation, 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.

The Article lacks use of words ‘shall’, ‘must’ and instead gives liberty to the States to provide for these rights as and when they think they can. These rights do not have immediate effect and thus this Covenant is called as ‘promotional convention’\textsuperscript{173}. Article 2(2) provides for gender equality as ICCPR. Article 3 again speaks of equality between men and women. Article 4 provides for

\textsuperscript{172} Henry Steiner, Philip Alston and Ryan Goodman, 2008, p. 875.

\textsuperscript{173} A.H. Robertson and J. G. Merrills, 2005, p. 276.
limitations on the enumerated rights. The limitations would be “. . . as determined by law . . . and solely for the purpose of promoting the general welfare”.

Article 5 puts restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.” From Article 6 to 15 the Covenant mentions different ESCRs. These are right to work, right to just and favourable conditions of work including fair wages, equal pay for equal work, right to form and join trade unions, right to strike, right to social security, protection of family, right to an adequate standard of living, right to the highest attainable standard of physical and mental health, right to education (which is also a civil and political right), and right to participate in cultural life.

Articles 16-25 of the Covenant lay the foundation of monitoring of this Covenant. It provides for periodic reports by the States explaining the initiatives taken by them to implement these rights in its territory. However, the ICESCR is the only exception of a Covenant or Convention which does not provide for its treaty body which speaks for the lack of will to enforce these rights by the drafters and the United Nation General Assembly.

The Economic and Social Council by its resolution came upon a Treaty Body for this Covenant. It was to be assisted by sectional working group. There were regular annual members of this group from 1979 to 1986 but could not overcome the problems faced by it. For example, meeting for three weeks was too short a time to discuss such sensitive matters. In 1985 it was thought to have a new body in place of the working group and the UN Committee on Economic Social and Cultural Rights was formed.174 The Committee was established under Economic and Social Council Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the UN Economic and Social Council in Part IV

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of the Covenant.\textsuperscript{175} It held its just session in March 1987.

From the above overview of the Covenants and their provisions the ‘textual and contextual’ difference between the two is very evident. The following words support this argument from the textual aspect:

In December 2008 the ICESCR has been added by an Optional Protocol which has introduced the Individual Complaint mechanism for the monitoring of this Covenant also. It is a remarkable achievement for the enforcement of these rights which brings them to equal platform with the CPRs. It will also be beneficial to the non-western countries where there is preference to these rights however; there is no redressal mechanism beyond the State. Secondly, the jurisprudence on the ESCRs will develop once this mechanism is enforced which will bring these rights to the academic focus also. The proposal of such a protocol was simmering since 1990.\textsuperscript{176}

In addition to these two Covenants there are several other instruments and treaties which are used for the UN’s human rights monitoring. They are discussed ahead.

\textbf{2.5.3.3 Other Human Rights Conventions of the United Nations}

The standard setting of human rights by the UN is not confined to these two Covenants. There are other six treaties or conventions adopted by the UN under its treaty body system of monitoring.\textsuperscript{177} These conventions, when enforced, have treaty bodies like the Human Rights Committee for the ICCPR and the Economic and Social Committee for the ICESCR to monitor the compliance of the provisions of the treaty. They also follow two systems for monitoring, first the State reporting and the second the individual complaint mechanism. Some conventions have adopted the individual complaint mechanism in the main convention itself, for example, the Convention against Torture and Other

\textsuperscript{175} Available at: http://www2.ohchr.org/english/bodies/cescr/. Visited on 13 November 2009.

\textsuperscript{176} For further details, see: http://www.escr-net.org/resources_more/resources_more_show.htm?doc_id=421703. Visited on 27 August 2010.

\textsuperscript{177} These are namely, the International Convention on Elimination of All Forms of Racial Discrimination (CERD) 1966, The Elimination of All forms of Discrimination Against Women (CEDAW), 1979, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, the Convention on Rights of the Child (CRC), 1989, the International Convention on Rights of All Migrant Workers and Members of Their Families (ICMW), 1990, the Convention on the Rights of the Persons with Disabilities (CRPD), 2006177 and the International Convention for the Protection of All Persons from Enforced Disappearance (ICED), 2006.
Cruel, Inhuman or Degrading Treatment or Punishment (CAT),\textsuperscript{178} and The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)\textsuperscript{179} and the yet to be enforced ICMW.\textsuperscript{180}

However, some of these have adopted these in a separate Option Protocols (OPs), for example ICCPR, ICESCR etc. Almost all the Treaty bodies issue General Comments (general recommendations in case of CERD and CEDAW). One important feature of these treaty bodies is that they involve NGOs in their monitoring. For example, the ICCPR prepares a shadow report of the States with the help of the NGOs of the States concerned so that information on the real situation of the human rights can be obtained. The international monitoring of human rights is understood to be incomplete without the participation of the NGOS or the Civil Society.\textsuperscript{181}

This point is emphasized upon in the International Conferences on Human Rights also which are dealt with ahead in this chapter. This is an important feature as far as this study is concerned because in Asia and its sub-regions the NGOs are very active and hence they can be used as the plinth for a regional human rights system in this region or its sub-regions. This argument will be invoked later in this study to build up a case for South Asian Human Rights Mechanism.

2.5.3.4 Towards Reconciliation of the Dichotomy

In the beginning of this chapter as we were having a glance at the development of the concept of human rights at international level, we observed that the first international organization to work for human rights was the ILO. And this

\textsuperscript{178} Article 22 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). For further details, see: http://www2.ohchr.org/english/law/cmw.htm. Visited on 20 January 2010.


\textsuperscript{180} Article 77 of the International Convention on Rights of All Migrant Workers and Members of Their Families (ICMW). For further details, see: http://www2.ohchr.org/english/law/cmw.htm. Visited on 20 January 2010.

organization also worked for the fortification of the ESCRs, therefore, from legal and historical point of view also, at international level the first kind of human rights to be promoted and ensured were the ESCRs and not the CPRs. Coming towards the final enforcement of these two International Covenants the ICESCR was adopted before the ICCPR, the former was enforced on 3 January 1976 and the latter on 23 March 1976.

The regions which have adopted an independent mechanism for human rights especially the European and the Inter-American, have also given more weightage to the CPRs. However, fortunately the importance of the ESCRs could not be overshadowed by all these efforts. That is why the African System on human rights came up with a unique balance between these two kinds of human rights.

The UN was not ignorant of the inter-dependence of these two basic kinds of classifications of human rights. In order to address similar other controversies and dichotomies revolving around these rights there were several conferences organised by the UN from 1975 onwards. Leaving aside the ones held for more specific issues like rights of the women, children etc., we will deal with those International conferences which deal with the general issues of human rights.

This part of the study will focus on the International Conference on Human Rights of 1968 and the World Conference on Human Rights of 1993. Reason for dealing with these specific conferences in this study is that these conferences held that the CPRs and the ESCRs are inter-related and equal; these conferences also highlighted the role of regional organizations in the promotion and protection of human rights. More over these conferences also emphasized the role of the civil society or the NGOs in human rights regimes of all levels. An overview of the recommendations of these conferences is given ahead.

2.5.3.4.1 The Two World Conferences on Human Rights

The International Conference on Human Rights, also known as the Tehran Conference was held in Tehran, Iran from 22 April to 13 May 1968. The primary purpose to hold this conference was to celebrate the two decades of the adoption of the UDHR and to evaluate its effectiveness. The Para 3 of the Proclamation

of Tehran speaks for regional organizations. For example in Para 13 the Proclamation also favoured the inter-relationship of the CPRs and the ESCRs. The Tehran Conference was the first World Conference on Human Rights and the second was held in 1993 at Vienna, Austria.

The Second Conference was very important for several reasons, firstly because it was the first such conference after the end of Cold War, and consequently it witnessed the maximum number of participants from around the world. This Conference was being held in accordance with the prior suggestions of the regions and the NGOs as well. The UN constituted a Preparatory Committee for the preliminary works of the Conference which included regional meetings on human rights. The Vienna Programme of Action in its Para 5 speaks for the indivisibility of human rights and states.

The Para 13 of the Program of Action mentions the importance of the regional regime for the promotion and protection of human rights and also highlights the role of the NGOs. In addition to this in Para 76 of the section ‘C’ of the same part of the Program of Action it was urged to the regions and the sub-regions to promote human rights and take actions. Also in Para 92 it was clearly stated

184 The provision says that: All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.
185 The provision says that: There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist.
186 The provision says that: The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request
that there is a need to establish regional arrangement for the implementation of universal human rights norms. The UN General Assembly adopted a Resolution No. 52/148 on 12 December 1997 as a follow up of the Vienna Declaration and Program of Action. And the suggestions were once again emphasised upon.

2.6 Conclusion

In the elaborative discussion given above, I have tried to build up the argument that the International human rights regime itself made way for the regional regimes for human rights. Secondly, the role of the NGOs was recognized by the UN and was forwarded as a suggestion to the other regional organizations working for human rights to follow. Lastly, I have tried to mention at every possible step that regional approaches have been a part of the UN’s human rights efforts from the very beginning. Therefore, the regional human rights systems are not a break away from the UN’s approach to human rights. All these points have been substantiated in the next chapter which deals with the regional human rights mechanisms.

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187 The provision says that: The World Conference on Human Rights recommends that the Commission on Human Rights examine the possibility for better implementation of existing human rights instruments at the international and regional levels and encourages the International Law Commission to continue its work on an international criminal court.