4.1 Introduction

Human rights are for all human beings. Human rights are important in leading to the development of the individual, which in turn results in the development of society. Learning after the distresses from the past, such as wars and authoritative regimes, human kind has become serious about the need to protect their basic rights. This is because, violations of their essential rights are not limited to any single or particular State but it has become a global phenomenon. Mere desire to have rights or to enforce rights is insufficient to protect the real entitlements of the individuals until they are clearly listed, effectively recognised by legal frameworks and effective remedies are developed in case of breach of such rights. Therefore, based on cooperation, cutting across national borders and other barriers such as race, religion, caste, and nationality or other similar grounds, the members of the human family have developed norms, institutions and mechanisms to protect human rights of all living human beings. Currently, human rights are protected and promoted with the aid of law and legal system. Consequently, the human rights protection mechanism depends upon either Charter-based or treaty-based mechanisms operating globally. This Chapter deals with the role of the United Nations in promotion of human rights, contents of the International Bill of Rights, classification of human rights, and mechanisms for enforcement of human rights followed by a conclusion.

4.2 Role of the United Nations: Mandates and Organs: An overview

The promotion and protection of human rights has been a major concern for the United Nations (UN) since 1945 and to this effect, it has resolved that the terrors of the World Wars should never re-occur. Reverence for human rights and human dignity is the foundation of freedom, justice and peace in the world.¹ Over the years, a whole network of human rights instruments and mechanisms are developed by the UN to ensure the primacy of human rights and to confront human rights violations wherever they occur.

It is said: “The creation of a body of International Human Rights Law is one of the United Nations’ great achievements. The United Nations has helped negotiate more than 70 human rights treaties and declarations, many focused on the rights of vulnerable groups such as women, children, persons with disabilities, minorities and indigenous peoples. Together, these treaties and declarations have helped create a ‘culture of human rights’ throughout the world, providing a powerful tool to protect and promote all rights. In accordance with the treaties, States parties have set up treaty body committees that may call upon States to respond to allegations, adopt decisions and publish them along with criticisms or recommendations”. 2

United Nations Children’s Fund (UNICEF) as to the role of the UN has observed, “the standards articulated in the international Covenants… have been reinforced through declarations and plans of action that have emerged from a series of World Conferences organized by the United Nations. These conferences have gained importance as real forums for deciding on national and international policy regarding such global issues as the environment, human rights and economic development. They focus world attention on these issues and place them squarely on the global agenda”. 3

All the fifty States represented at the San Francisco Conference unanimously approved the UN Charter, without reservations. 4 When the League of Nations failed to stop the occurring of World War II that resulted in human suffering in the form of colossal loss of life of persons and destruction of their property, as disclosed by the post-War discoveries of the acts of genocide both in Europe and Asia, it was not surprising that a new global organisation would be established. 5 At the time of formation of the UN, the world community was split along into three axes: the great powers, the small and middle powers, and the enemy States. 6 Each represented a different bloc of interests and presented a distinct set of difficulties for the re-negotiation of international political community. The great powers arrived at San Francisco were convinced of the merits of their proposals for a world order that was devised at Dumbarton Oaks. The small and

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3 Ibid.
middle powers brought to California a set of anxieties about the shape of order expressed in the Dumbarton Oaks proposals. Finally, there were the enemy powers. They were the outsiders against whom the other nations were to be ‘united’, and were to have no role in drafting the new Charter, they were to be excluded, initially, from the resulting organisation.

The idea of permanent seats was to impose greater responsibility for the maintenance of peace that could be managed then only by a few States. In this regard, the Union of Soviet Socialist Republics and the United Kingdom formed a natural alliance. However, the question of China's and, later, France's membership quickly became an issue of contention. The British were against Chinese membership, believing the Chinese to be unworthy of this status and the Soviets refused to even talk to the Chinese as equals. These disputes resulted in two separate conversations at Dumbarton Oaks, one between the United States, United Kingdom and the Soviet Union and the other involving the United States, United Kingdom and China. In the end, the American interest in having the Chinese as the junior policing partners in the Pacific prevailed over more material criteria and China was admitted to the great power group. By mid-1944, however, pressure was rising to allow France a place at the table and France was eventually admitted in 1945. The result of all this was the present composition of the permanent members of the Security Council, the ‘P5’.

As to the principles contained in the Charter, Zemanek’s observation is fitting. He opined that almost all the fundamental principles of international law can be found in the Charter. The Preamble give the Charter a forward-looking constitutional flavour as it employs the expression ‘The Peoples of the United Nations' are said to enjoy rights and obligations under the Charter. This represents the first use of the concept of 'Peoples' appearing in international law as a legal category. The Preamble summarises the objectives and the purposes of the UN. To some extent, it repeats the provisions of Articles 1 and 2 Article 1.1, empowers the organisation to take effective collective

7 Ibid.
8 Ibid. at p. 136.
9 Ibid. at pp. 140-141.
measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression as the main objective of the UN is the maintenance of international peace and security. Article 1.2 emphasises on development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Under Article 1.3, States have the obligation to co-operate in solving international problems of an economic, social, cultural or humanitarian character, and to promote respect for human rights.

This provision is interpreted as binding on all States. Indeed, it is said, “the obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinctions appears to have reached the status of *jus cogens”*.\(^{12}\) Similarly, it is viewed that almost all the principles listed in Article 2 have achieved the status of *jus cogens*. States have the fundamental duty to settle international disputes by peaceful means, which is one of the purposes of the UN, as stated in Article 1.1 and as a general principle in Article 2.3. Article 33 provides a non-exhaustive list of dispute settlement mode.\(^{13}\) Article 4.1 declares that the UN’s membership is open to all other peace-loving States that accept the obligations contained in the Charter and Article 4.2 provides that admission of a new member in the UN will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Articles 7.1 and 7.2 declares that the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and a Secretariat are the principal organs of the UN, which may establish subsidiary organs for their effective functioning in accordance with the Charter. All the principal organs will be dealt succinctly as they are the organs that are responsible for the protection and promotion of international peace, security and human rights within the framework of the Charter of the UN.


\(^{13}\) The validity of this principle was reinforced by the Manila Declaration on the Peaceful Settlement of International Disputes, and a number of General Assembly resolutions. The importance of the principle of peaceful settlement is evidenced by the prominent place it occupies in the great regional arrangements, such as the Organisation of American States and the Organisation of African Unity, the many treaties on the protection of human rights, and on arms control, the comprehensive provisions of Part XV of the Law of the Sea Convention 1982, and the Dispute Settlement Understanding of the World Trade Organisation. See Ronald Macdonald; *supra* note 11, at p. 209.
4.2.1 The General Assembly

The General Assembly consists of all the members of the United Nations.\textsuperscript{14} Article 10 of the Charter defines the functions and powers of the General Assembly. It is authorised to discuss any question on any matters within the scope of the Charter and functions of any Organs of the UN.\textsuperscript{15} In this respect, it constitutes a forum for open and public discussion as it can hold discussion on any question of international importance. It may also recommend measures for the peaceful settlement of any situation, regardless of origin, which seems likely to impair the general welfare or the friendly relations among nations.\textsuperscript{16} However, it cannot make recommendations concerning any dispute, which is pending before or being dealt by the Security Council, though it may discuss it.\textsuperscript{17} It has, however, the control over the finance, it approves the budget and apportions the expenses of the Organisation. It also supervises the finances of the 'specialised agencies’ elects and supervises both the Economic and Social Council and the Trusteeship Council and shares with the Security Council the task of electing the judges of the International Court of Justice.

The General Assembly has absolute power to initiate studies and even to make recommendations for the purpose of promoting international co-operation in the political, economic, social, cultural, educational, and health fields, to encourage the progressive development of international law, and to assist in the realisation of human rights.\textsuperscript{18} The General Assembly can take decisions by a majority vote, that is, by a two-thirds majority for important questions, and by a simple majority for all other questions, as compared with the League Assembly, which could only deliberate by a unanimous vote.\textsuperscript{19} Each country has one vote.\textsuperscript{20} The Assembly has adopted its own rules of procedure and elects its President for each session.\textsuperscript{21} The General Assembly occupies a central position as the chief deliberative, policymaking and representative organ of the United Nations. The Assembly meets in regular session intensively from September to December each year.

\textsuperscript{14} The Charter of the United Nations 1945, Article 7.
\textsuperscript{15} Ibid. Article 10.
\textsuperscript{16} Ibid. Article 14.
\textsuperscript{17} Ibid. Article 12.
\textsuperscript{18} Ibid. Article 13.
\textsuperscript{19} Ibid. Article 18.
\textsuperscript{20} Ibid. Article 18.1.
\textsuperscript{21} Ibid. Article 20.
and thereafter as required. The General Assembly has the power to establish such subsidiary organs, as it deems necessary for the discharge of its functions.\textsuperscript{22} Accordingly, it has established several subsidiary organs and they are divided into categories: Boards, Commissions, Committees, Councils and Panels, and Working Groups and others. After discussing the items on the agenda, seeking where possible to harmonise the various approaches of States, the subsidiary organs present their recommendations, usually in the form of draft resolutions and decisions, to a plenary meeting of the Assembly for its consideration.\textsuperscript{23}

The General Assembly has accomplished several achievements. For instance, with the adoption of the Disarmament Resolution, it has created an effective system of verification and control of armaments. Further, the Resolution ensures the pledge of members of the General Assembly to undertake a progressive and balanced reduction of armed forces. The General Assembly has relevance in developing the formation of principles of general customary law by adding the significant weight of an interpretation shared by the vast majority of States. It is said, when a resolution restates and clarifies existing principles of the Charter or existing principles of international customary law it means the majority of States consider the interpretation given by the resolution to be representative of the current \textit{opinio juris} on the subject.\textsuperscript{24}

Among the important declarations of the General Assembly that have developed the principles of the Charter and in part become rules of \textit{jus cogens}, the following may be mentioned: (i) the Declaration 217A (III) of 1948 proclaiming the Universal Declaration of Human Rights; (ii) Declaration 1514 (XV) of 1960 regarding the granting of independence to peoples under colonial domination; (iii) Resolution 2625 (XXV) 1970, Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States, and (iv) the related Resolution 3314 (XXIX) 1974 on the Definition of Aggression; (v) Declaration 1803 (XVII) of 1962 on Permanent Sovereignty over Natural Resources; (vi) Resolutions 2749 (XXV) of 1970 on the Principle applicable to the Seabed and Subsoil of the Oceans beyond National

\textsuperscript{22}\textit{Ibid.} Article 22.
\textsuperscript{23} For more information, see http://www.un.org/en/ga/about/subsidiary/index.shtml.
\textsuperscript{24} \textit{Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States)} 1986 ICJ Rep 14, 188.
Jurisdiction; (vii) Resolution 1962 (XVIII) Declaration of Principles Governing the Activities of States in the Exploration and Use of Outer Space.\(^{25}\)

Other significant contributions made by the General Assembly may be summarised as follows. The UN Children's Emergency Fund (UNICEF), a subsidiary body was set up by the General Assembly in 1946 to render valuable assistance to the developing countries to respond appropriately to the cause of child welfare. In 1959, the General Assembly adopted a Declaration on the Rights of Child.\(^{26}\) In 1975, the General Assembly adopted a Declaration on the Rights of the Disabled Persons through which it called for national and international action for special protection the vulnerable groups. In 1975, The World Health Organisation adopted a set of Guidelines for Medical Doctors concerning Torture or Punishment in Relation to Detention or Imprisonment at the invitation of the General Assembly. Later the General Assembly adopted a set of "Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture."\(^{27}\) In 1986, the General Assembly adopted a Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Adoption of children. In 1990, the General Assembly adopted a Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, setting standards for laws, and judicial and administrative procedures of States in dealing with issues of migrant workers. The General Assembly adopted a Declaration on the Right of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in 1992 that stressed the rights of minorities to their culture, religion, and language, to contacts with others on the group; and to freedom of movement.

Acting under its general mandate, the General Assembly created in 1993 a new post of United Nations High Commissioner for Human Rights as a senior UN official with special responsibility for the human rights activities of the United Nations, under the aegis of the UN Secretary-General.\(^{28}\) From these instances, it is clear that General


\(^{26}\) United Nations General Assembly Res. 1386 (XIV) of 1959.


\(^{28}\) *Ibid.* at pp. 61-64.
Assembly is not only one of the principal organs of the UN but also a principal contributor to the cause of protection and promotion of human rights.

4.2.2 Security Council

The Security Council consists of fifteen members of the UN. The republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America are the permanent members of the Security Council. The General Assembly elects ten other Members of the UN to be non-permanent members of the Security Council. In this process, due regard will be paid in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security, to the other purposes of the Organization, and also to equitable geographical distribution. The non-permanent members of the Security Council are elected for a term of two years and a retiring member is ineligible for immediate re-election. Articles 32 and 35 of the Charter deal with non-member States, whose participation in the work of the General Assembly and the Security Council has been encouraged.

The Security Council has the primary responsibility for the maintenance of international peace and security. However, it is not the sole responsibility of the Security Council. The General Assembly has general obligation under the mandate of maintaining international peace and security. Members have the obligation to carry out the decisions of the Security Council in accordance with the Charter of the UN. The Security Council for the purpose of establishing and maintaining international peace and security may take assistance of the Military Staff Committees referred to in Article 47 of the Charter. Each member has one vote and Articles 27.2 and 27.3 of the Charter deal with other matters pertaining to voting. The Security Council, which has to function continuously, holds periodic meetings at such places as in its judgement will best

30 Ibid.
31 Ibid. Article 23.2.
32 Ibid. Article 24.1.
33 Certain Expenses of the UN Case, 1962 ICJ Reports, p. 151.
34 The Charter of the United Nations 1945, Article 25.
36 Ibid. Article 27.1.
facilitate its work. The Security Council has also the power to establish subsidiary organs, as it deems necessary for the performance of its functions, and can adopt its own rules of procedure. The Charter further envisages the setting up of special regional arrangements and agencies for the maintenance of peace and security. No regional group, however, may take enforcement action without the authority of the Security Council. Moreover, all such arrangements, in order to be valid, must be consistent with the Charter. The Security Council has to submit annual and special reports to the General Assembly for its consideration.

It is said, in the process of carrying out “...this critically important mandate, the Security Council has adopted over 2,000 Resolutions relating to conflict and post-conflict situations around the globe. Since 1946, the Council has mandated the deployment of over 60 peacekeeping missions, and nearly 100,000 uniformed personnel serve current missions”. Indeed, these peacekeeping missions have successfully played a role in maintaining lines of separation between combatants, facilitating peace agreements, and the protection of civilians. Article 41 of the Charter lists a series of measures not involving the use of armed force that the Council may call on the members to apply in order to give effect to its decisions. Under Article 42, it may even take such actions involving the use of force as may be necessary to maintain or restore international peace and security. Articles 43 to 47 set out the basis of Security Council action as regards the use of armed forces. The Security Council Informal Working Group on Documentation and Other Procedural Questions (IWG) is the main forum where the “Notes” have been discussed and decided on by members of the Council. This was established to enhance and streamline ways and means whereby the Security Council addresses issues related to its documentation and other procedural questions.

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37 Ibid. Article 28.
38 Ibid. Article 29.
39 Ibid. Article 30.
40 Ibid. Article 52.2.
41 Ibid. Articles 52.1 and 53.
42 Ibid. Article 24.2.
44 Ibid.
Under Chapter VII of the Charter, the Security Council will have to take decisions which involve its taking direct measures in connection with the settlement of disputes, the adjustment of situations likely to lead to disputes, the determination of threats to peace, the removal of threats to the peace, and the suppression of breaches of the peace. It will also have to take decisions that do not involve any such measures.\(^{45}\) It is submitted that peace keeping which is a primary function of the Security Council is a *quid pro quo* to the enjoyment of human right. Therefore, Security Council’s primary function results in one of the important contribution to the cause of protection and promotion of human rights.

### 4.2.3 Economic and Social Council

With a view to establishing stability and well-being, which are necessary for peaceful and friendly relation among nations based on the principle of equal rights and self-determination of peoples, the United Nations has the mandate under Article 55 of the Charter to promote higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

It is the obligation of all members of the UN to take joint and severed actions in cooperation with the UN for the achievement of the aforementioned purposes.\(^{46}\) All Specialised Agencies established by intergovernmental agreement working in the above-specified fields are also brought into engagement with the UN in accordance Article 63 of the Charter. Indeed, any such agency that is brought into relationship with the UN is referred to as specialised agencies.\(^{47}\) According to Article 57, which refers to 'specialised agencies' brought into relationship with the United Nations states that they would apply to bodies such as the International Labour Organisation, the International Bank, the International Monetary Fund, the Food and Agriculture Organisation and the many other agencies.

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\(^{46}\) The Charter of the United Nations 1945, Article 56.

\(^{47}\) *Ibid.* Articles 57 and 58.
inter-Governmental commissions on health, education and cultural international agreements.48

The Economic and Social Council consists of fifty-four members of the UN elected by the General Assembly.49 Each member has one vote and a majority of the members present and voting can take decisions.50 “The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly to the Members of the United Nations, and to the specialised agencies concerned. It may also make recommendations for promoting respect for, and observance of, human rights and fundamental freedoms for all. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence. It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence, including human rights.51 For its effective functioning, the Economic and Social Council may enter into agreements with any of the agencies with the approval of the General Assembly. Further, it can take appropriate steps to obtain regular reports from the specialised agencies and even to obtain reports on steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly. Thereafter, it may communicate its observations on such reports to the General Assembly.52

The Economic and Social Council can adopt its own rules of procedure and it meets as per rules.53 It has to furnish information to the Security Council and assist it upon its request.54 It is obligated to perform all functions within its competence in connection with the carrying out of the recommendations of the General Assembly and as assigned to it by the General Assembly.55 With the approval of the General Assembly, it

48 Michael Kirby, supra note 5, at p. 31.
49 For details on the composition of the Economic and Social Council, see The Charter of the United Nations 1945, Article 61.
50 Ibid. Article 67.
51 Ibid. Article 62.
52 Ibid. Articles 63 and 64.
53 Ibid. Article 72.
54 Ibid. Article 65.
55 Ibid. Articles 66.1 and 66.3.
performs services at the request of members and specialised agencies.\(^{56}\) The Economic and Social Council can also set up commissions in economic and social fields and for the promotion of human rights, and any such commissions as may be required for the performance of its functions.\(^{57}\) It may make suitable arrangements for consultation with non-governmental organisations that are concerned with matters within its competence. Similar arrangements can be made with international and national organisations after consultation with the members concerned.\(^{58}\)

The Economic and Social Council had established the Commission on Human Rights and the Commission on the Status of Women. The Human Rights Council replaced the Commission on Human Rights in 2006, as the former was found ineffective. The Sub-Commission on Prevention of Discrimination and Protection of Minorities was renamed in 1999 as the Sub-Commission on the Promotion and Protection of Human Rights. The Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights. Under the Charter, the non-governmental organisations (NGOs) concerned with matters may be consulted and it is very much within the Economic and Social Council’s competence.

### 4.2.4 Trusteeship Council

The UN, in accordance with Article 75 of the Charter can establish under its authority an international trusteeship system for the administration, supervision of such territories as may be placed thereunder by subsequent individual agreements and such territories are known as trust territories.\(^{59}\) The basic objectives behind establishing trusteeship system are to further international peace and security. To promote the political, economic, social and educational advancements of the inhabitants of such territories, to encourage respect for human rights and to ensure equal treatment in social, economic, and commercial matters for all members of the UN.\(^{60}\) Articles 77-85 of the Charter deal with the other principles relating to trusteeship system. Trusteeship Council

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\(^{56}\) Ibid. Article 66.2.  
\(^{57}\) Ibid. Article 68.  
\(^{58}\) Ibid. Article 71.  
\(^{59}\) Ibid. Article 75.  
\(^{60}\) Ibid. Article 76.
is the appropriate Organ of the UN to deal with trusteeship system. The Trusteeship Council comprises of those members of the UN administering trust territories, such of those members mentioned by name in Article 23 as are not administering trust territories, and as many other members elected for three-year terms by the General Assembly to ensure that the total number of members of this Council is equally divided between those members of the UN that administer trust territories and those that do not. The Council can take actions in conformity with the terms of the trusteeship agreements and along with or under the authority of the General Assembly, the Council can consider reports submitted by the administering authority, accept petitions and examine them in consultation with such authorities and provide periodic visits to trust territories.

The Council formulates a questionnaire on the political, economic, social and educational advancements of the inhabitants of each trust territory, and the administering authorities of such territories make an annual report to the General Assembly upon the basis of such questionnaire. Every decision of the Council is to be made by a majority of the members present and voting and each member has one vote. Further, the Council has the authority to adopt its own rules of procedure, meets in accordance with its rules and it can avail the assistance of the Economic and Social Council and of the Specialised Agencies of the UN concerning matters with which they are respectively concerned.

4.2.5 International Court of Justice

The Court, unlike the Permanent Court of International Justice, forms part of the UN and plays an important role in the settlement of legal disputes in the capacity of principal judicial organ of the United Nations. Its immense contribution lies in the development of human rights jurisprudence, and case laws through a progressive series of judicial pronouncements. The Court functions in accordance with the Statute of International Court of Justice, which is based on the Statute of the Permanent Court of International Justice. The International Court of Justice (ICJ) is composed of 15 judges, who are elected for a term of nine years by the General Assembly of the United Nations.

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61 Ibid. Article 86.
62 Ibid. Article 87.
63 Ibid. Article 88.
64 Ibid. Article 89.
65 Ibid. Articles 90 and 91.
66 Ibid. Article 92.
and the Security Council. A Registry, its administrative organ, assists it. It is said, “The discussions at the San Francisco Conference regarding the constitution of the court were chiefly directed to the question whether the Permanent Court of International Justice should be made an organ of the United Nations or whether a new court should be established. The majority of the Committee (Commission IV-Judicial Organisation) finally decided that a new court should be created”.

The majority of the members of the Committee mentioned above were initially in favour of compulsory jurisdiction but later it was decided by a majority to retain the 'optional clause' set out in Article 36 of the Court's Statute under which the member States 'may at any time declare that they recognise without special agreement the jurisdiction of the Court in all legal disputes concerning (a) interpretation of a treaty; (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; and (d) the nature or extent of the reparation to be made for the breach of an international obligation. In addition, the Court has its jurisdiction to decide all disputes referred to it by virtue of a particular convention or treaty. All members of the UN are ipso facto parties to the Statute of the ICJ. A non-member may become a party to the Statute of ICJ on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council. Every member is required to comply with the decision of the ICJ. If any party to a case fails to perform the obligations as rendered by the ICJ, the other party may have recourse to the Security Council, which make recommendations or decide upon measures to be taken to give effect to the judgement.

The ICJ has authority to render its advisory opinion upon a request made by either the General Assembly or the Security Council on any legal question. Other organs of the United Nations and specialised agencies may request for advisory opinions of the Court on legal questions arising within the scope of their activities, at any time if authorised by the General Assembly. The Court generally discharges its duties as a full Court, a quorum of nine judges, excluding ad hoc judges. However, it may also form permanent

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67 Michael Kirby, supra note 5, at p. 29.
68 Ibid.
69 The Charter of the United Nations 1945, Article 93.
70 Ibid. Article 94.
71 Ibid. Article 96.
or temporary chambers. The Court has three types of chamber: the Chamber of Summary Procedure, comprising five judges, including the President and Vice-President, and two substitutes, which the Court is required by Article 29 of the Statute of the ICJ to form annually with a view to the speedy despatch of business; any chamber, comprising at least three judges, that the Court may form pursuant to Article 26, paragraph 1 of the Statute to deal with certain categories of cases, such as labour or communications; and any chamber that the Court may form pursuant to Article 26, paragraph 2, of the Statute to deal with a particular case, after formally consulting the parties regarding the number of its members, who will then sit in all phases of the case until its final conclusion, even if in the meantime they cease to be Members of the Court.

The Registry assists the Court, which is the permanent administrative organ of the Court. It is solely accountable to the Court. A Registrar heads the Registry and a Deputy-Registrar assists. The Registry’s tasks are not only those of a service helping in the administration of justice, with sovereign States as litigants, but also those of a Secretariat of an international commission. Its activities are judicial and diplomatic, as well as administrative. The Registry consists of three Departments: Legal Matters; Linguistic Matters; and Information, and further technical Divisions are made such as, personnel, administration; finance; publications; library; IT; and Archives. It currently comprises some 100 officials, either permanent or holding fixed-term contracts, appointed by the Court or the Registrar. Every year the Court submits a report on its activities to the United Nations General Assembly. The Report covers the period from 1 August of one year to 31 July of the next. It generally includes an introductory summary and information relating to the organization, jurisdiction and judicial work of the Court, visits, events and lectures, the Court’s publications and documents, and administrative and budgetary issues.

4.2.6 Secretariat

The Secretariat comprises of a Secretary-General and such staff as the UN may require. The Secretary-General is appointed by the General Assembly upon the recommendation of the Security Council, who shall be the chief administrative officer of

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73 Ibid.
the Organization. As the head of the Secretary of the UN, the Secretary General has to act in all meetings of all Organs excluding ICJ and has the obligation to perform functions as are entrusted to him by those Organs. An annual report has to be submitted by him to the General Assembly on the work of the organisation. The Secretary General brings to the attention of the Security Council any matter that in his opinion may intimidate the conservation of international peace and security. In the performance of their duties, the Secretary-General and the staff must not seek or receive instructions from any government or from any other authority external to the Organization. All Members of the UN must respect the exclusive international character of the responsibilities of the Secretary-General and the staff without influencing them in the discharge of their responsibilities.

To summarise, the UN Charter placed the promotion of human rights among the purposes of the United Nations, on the same footing as the maintenance of international peace and security. It has assigned its members the responsibility of promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion and explicated that all members pledge themselves to take joint and separate action in cooperation with the Organisation for the achievement of the purposes set forth in Article 55. What the Charter initiated was later reinforced by the Universal Declaration of Human Rights, which provided the content of human rights and allowed the United Nations to introduce changes to the normative foundations of international politics. The UN is functional through its principal organs and it has association with several specialised agencies, international organisations and non-governmental organisations for its effective accomplishments of its mandates. Each organ directly or indirectly deals with the issue of human rights by holding varying authority. Each organ of the UN is independent of the other and as a result a master of its

75 The Charter of the United Nations 1945, Article 97.
76 Ibid. Article 98.
77 The Secretary-General under regulations established by the General Assembly appoints the staffs. Appropriate staffs are permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. Staffs form a part of the Secretariat. They need to ensure highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible. See The Charter of the United Nations 1945, Article 101.
78 Ibid. Article 100.
own procedure. The UN promotes respect for the law and protection of human rights in many ways.

In addition to the above observations, the UN also acts as a monitoring system in the matter of human rights. It collects records as to observance of human rights obligations from each nation for its necessary action as per the Charter. It also has an Office of the High Commissioner for Human Rights, which is mandated to promote and protect the enjoyment and full realisation by all people of human rights. It has appointed ‘special procedures’ to address specific country situations or broader issues by appointing experts and special rapporteurs, or independent experts, to address a specific human rights issue or a particular country. The usage of experts is with a view to conduct studies, visit specific countries, interview victims, make specific appeals and submit reports and recommendations to the appropriate organs of the UN for needful measures and actions. Lastly, it is very important to recollect that UN has been primarily responsible for body of international human rights law, including International Bill of Rights.

4.3 International Bill of Rights: Substantive and Procedural aspects

Internationally recognised human rights are those included in the International Bill of Human Rights. The International Bill of Human Rights comprises of the UDHR, the two Covenants adopted based on UDHR, namely, International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights of 1966 and the Optional Protocols to the two Covenants. The International Bill has been extensively elaborated and recognised by series of conventions and declarations, at the universal level, regional level and national levels. These instruments are wide-ranging, but interrelated as well and the rights contained in these global instruments form a normative system for human rights. The International Bill of Rights is based on the idea that States are obligated to respect human rights. Therefore, States must accept the duty of effective implementation of human rights under the domestic law, and they must accept mechanisms of control within their respective sphere of domestic jurisdiction.79

4.3.1 The Universal Declaration of Human Rights 1948

The adoption of the Universal Declaration of Human Rights, hereinafter referred to, as UDHR or the Declaration was a big leap in the advancement of human rights. It has proclaimed universal human rights that apply to the entire humanity and consequently all States, persons, and organizations are required to respect them. UDHR has presented norms and procedures that serve as a prelude to the development further of an international culture of human rights.\(^8^0\) The Declaration has been the foundation for codification of human rights, and presently the international legal system is replete with global and regional treaties based, in large measure, on the Declaration.\(^8^1\)

It is said, starting with its Charter, the United Nations initiated a movement toward a political system that redefined not only interstate relationship, but also the relationship between States and individuals.\(^8^2\) The adoption of the Declaration is one of the greatest achievements of the United Nations as it provides the framework for the international recognition to human rights that were undefined by the Charter of the United Nations. The significant contribution of the Declaration lies not in its listing of human rights but its act of inclusion of both civil and political rights, and economic, social and cultural rights without distinction. These rights are important for the all-round development of human beings. This would indicate that the UN recognised interdependence, interrelatedness and indivisibility of all human rights from its inception. The Declaration would also indicate that the rights conferred by it are not absolute by recognising that everyone has duties to the community in which alone the free and full development of his personality is possible.

Thus, John P. Humphrey stated that “in the tradition of Magna Carta, the American Declaration of Independence, the French Declaration of the Rights of Man, and other historic statements, the Universal Declaration of Human Rights enshrines on the international level a universally accepted philosophy of freedom for the 20\(^{th}\) century moving beyond the historic declarations by recognizing that civil and political rights can have little meaning without economic, social, and cultural rights. Its moral and political


\(^8^2\) Zehra F. Kabasakal Arat, *supra* note 80.
authority is equal to that of the Charter of the United Nations itself."\(^{83}\) However, unlike
the UN’s Charter, the Declaration was not binding as it was only a Declaration or a
Resolution of the General Assembly as it was designed to be a declaration of principles
and aspirations. Although at the time of its adoption, the Declaration was not a legally
binding instrument, with passage of time some of its provisions now either constitute
customary international law or general principles of law. It is said, it even represents
elementary considerations of humanity.\(^{84}\) The UDHR set down minimum standards in
respect of a number of wide ranging identified rights and freedoms. It contains 30
Articles relating to those rights and freedoms that are every person’s birthright.

It is said, the UDHR was only the embryo of an international Bill of Rights and it
was not treated at first as a true source of legally binding obligations.\(^{85}\) The Preamble to
UDHR bears testimony to the fact that it was the first normative response of the
international community to the terrible experiences it had undergone during the
occurrence of wars.\(^{86}\) The Preamble emphasises that recognition of the inherent dignity
and of equal and inalienable rights of all members of the human family is the foundation
of freedom, justice and peace in the world. It also stresses that a common understanding
of the human rights and freedoms enshrined in the UN Charter is of greatest importance
for the full realisation of the pledge.

Following are the rights enumerated in the Declaration: right to life, liberty and
security of person (Article 3); prohibition of slavery or involuntary servitude (Article 4);
prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 5);
right to recognition as a person before the law (Article 6); right to equality before the law,
non-discrimination, and equal protection of the law (Article 7); right to an equal remedy
(Article 8); right to freedom from arbitrary arrest, detention, or exile (Article 9); right to a
fair and public hearing by an independent and impartial tribunal (Article 10); right to be
presumed innocent until proven guilty in accordance with law and right not to be held
guilty for any act or omission that did not constitute an offence at the time of commission

\(^{85}\) Francesco Francioni, *supra* note 79, at p. 474.
\(^{86}\) V. S. Mani, *supra* note 27, at p. 47.
of offence, and right not to be punished with a higher penalty than what was the punishment at the time of commission of an offence (Article 11); right to freedom from arbitrary interference with privacy, family, home or correspondence attack on one’s honour and reputation (Article 12); right to freedom of movement and residence within state boundary and right to leave any country and to return to one’s home country (Article 13); right to seek and enjoy asylum (Article 14); right to nationality and right to right to change nationality (Article 15); right to marry and found a family of choice (Article 16); right to property (Article 17); right to freedom of thought, conscience and religion (Article 18); right to freedom of opinion and expression (Article 19); right to freedom of peaceful assembly and association (Article 20); right to take part in government of one’s home country, have access to public service, and take part in elections (Article 21); right to social security (Article 22); right to work, to equal pay for equal work, and to form and join trade unions (Article 23); right to rest and leisure, limitation of working hours, and periodic holidays with pay (Article 24); right to a standard of living adequate for health and wellbeing, including clothing, housing, food, medical assistance or medical care and other necessary social services and right to security in the event of unemployment, sickness, disability, widowhood, old age or other incapacities that results in lack of livelihood in circumstances beyond one’s control (Article 25); right to education (Article 26); right to participate freely in cultural life and enjoy arts and to participate in scientific advancements, and right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author (Article 27); and right to a social and international order in which the rights and freedoms can be fully realised (Article 28).

The rights contained in the Declaration can be classified into five categories. ‘Rights of the Person’, 87 ‘Rights associated with the Rule of Law’, 88 ‘Political Rights’, 89

87 ‘Rights of the person’ refer to life, liberty, and security of the person; privacy and freedom of movement; ownership of property; freedom of thought, conscience, and religion, including freedom of religious teaching and practice “in public and private”; and prohibition of slavery, torture, and cruel or degrading punishment.

88 ‘Rights associated with the rule of law’ include equal recognition before the law and equal protection of the law; effective legal remedy for violation of legal rights; impartial hearing and trial; presumption of innocence; and prohibition of arbitrary arrest.

89 ‘Political rights’ encompass freedom of expression, assembly, and association; the right to take part in government; and periodic and genuine elections by universal and equal suffrage.
‘Economic and Social Rights’,⁹⁰ and ‘Rights of the Communities’.⁹¹ From this, it would be clear that the Declaration contains wide range of human rights. Indeed, Articles 3-21 of the UDHR deal with civil and political rights and they are considered ‘absolute’ and ‘immediate,’ whereas, Articles 22-28 deal with economic, social and cultural rights which are known as ‘programmatic,’ meaning to be progressively realised. Civil and political rights are negative obligations upon the States where States must refrain from interfering with those rights, while the economic, social and cultural rights require affirmative steps to be taken by the States and hence they are known as positive obligations on the States.

It is said, the most visible trend in the development of human rights over the past decades has been in the increased number and range of treaties that elucidate or add to the principles of the UDHR.⁹² Most notable are the two international Covenants, namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which transformed many of the principles of the UDHR into binding treaties since the time they came into force in 1976. A vast number of more specific instruments supplement these.⁹³ In addition, the Declaration has served as a model for many domestic constitutions, laws, regulations, and policies for protection of fundamental human rights.⁹⁴ Many of the Declaration's provisions also have become incorporated into customary international law which is binding on all the States. States have confirmed this development in intergovernmental and diplomatic settings, in

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⁹⁰ ‘Economic and social rights’ refer to an adequate standard of living; free choice of employment; protection against unemployment; "just and favourable remuneration," the right to join trade unions;" reasonable limitation of working hours"; free elementary education; social security; and the "highest attainable standard of physical and mental health."

⁹¹ Rights of communities’ include self-determination and protection of minority cultures.


⁹³ For example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child and regional conventions such as the European Convention on Human Rights in 1953, the American Convention on Human Rights in 1978, and the African Charter on Human and Peoples’ Rights in 1983.

⁹⁴ Many of the conventions specified above establish a special commission or committee designated to monitoring the treaty’s provisions for instance, the Committee on Torture.
arguments submitted to judicial tribunals, by the actions of intergovernmental organizations, and in the writings of legal scholars.\textsuperscript{95}

When the Covenants were finally adopted the contents of the Declaration were transformed into a hard law. It is said, individual States and the International Court of Justice have now recognized the existence of a body of customary international law of human rights.\textsuperscript{96} Over the years, the Declaration has indeed acquired in its Preamble a normative character as envisioned by its framers and as envisaged by its designation as a common standard of achievement for all peoples and all nations.

4.3.2 The International Covenant on Civil and Political Rights, 1966

Though the International Covenant on Civil and Political Rights, 1966 (ICCPR) is an offspring of the Declaration, it differed from it in many ways as it provided for a detailed elaboration of civil and political rights, regulated the practices of the States in matters of derogation of rights. Indeed, it provided an implementation mechanism and is a treaty having better binding force than the Declaration. The ICCPR provides for obligations on State Parties. The Preamble of the Covenant mentioned recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world, and these rights stem from the inherent dignity of the human person. In addition, the Preamble succinctly conveys that States similar to their obligation under the Charter of the UN must promote universal respect for, and observance of, human rights and freedoms. Further, it states that individuals have duties to each other and to the community to which they belong and it is to strive for the promotion and observance of the rights recognised in the Covenant. To fulfil these objectives, the Covenant is divided into Six Parts comprising of 53 Articles.

The right of self-determination is guaranteed by the Covenant and as a result the States have the obligation to administer Trust Territories by respecting the right of self-determination which enables the individuals to determine their political status and development, right to meet their ends, right against deprivation of means of subsistence

\textsuperscript{96} Francesco Francioni, \textit{supra} note 79, at p. 474.
(Article 1). Under the Covenant, the States have the obligation to promote all rights without distinction of any kind, and take necessary steps to give effect to the rights conferred by providing effective remedy against violations (Article 2). It is pertinent to note that men and women are granted equal status in the enjoyment of all rights guaranteed by the Covenant (Article 3).

Article 4 (i) of the Covenant provides for derogation of rights by the State parties during public emergency that threaten the life of the nation. However, according to this provision, the States must officially proclaim the existence of such an emergency before derogating from their obligations under the Covenant, (ii) derogation is permitted only to the extent strictly required by the exigencies of the situation and such measures of derogation must not be inconsistent with other obligations of the State under international law, (iii) State must not discriminate on the ground of race, colour, sex, language, religion or social origin while taking recourse to derogations, (iv) there can be no derogation from Articles 6-8 (paragraphs 1 and 2), 11, 15, 16 and 18, and (v) a State that derogates from its obligations shall immediately inform the other Parties through the Secretary-General of the United Nations and notify the provisions from which it has derogated, the reasons for so doing along with the date on which it terminates such derogation.

Article 5 prohibits destruction of any of the rights and freedoms recognised by the Covenant. Further, it provides for restriction upon derogation from any of the fundamental human rights existing in any State Party pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights. Article 6 provides an inherent right to life that cannot be arbitrarily deprived. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime pursuant to a final judgement rendered by a competent court provided it is not contrary to the provisions of the Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. However, those who have been sentenced to death have the right to seek pardon or commutation of the sentence.

Right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment, prohibition of slavery, slave trade and servitude, right against imprisonment on ground of inability to fulfil a contractual obligation, non-retroactivity of criminal law, right to recognition as a person before law, freedom of thought, conscience and religion, and right against discrimination based on race, colour, sex, language, religion or social origin are Non-derogable rights under the ICCPR, 1966.
Amnesty, pardon or commutation of the sentence of death may be granted in all cases. Most importantly by giving recognition to the tender age of the person and motherhood, ICCPR states that sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Article 7 protects individuals from torture or cruel, inhuman or degrading treatment or punishment.\textsuperscript{98} In addition, it holds that no one can be subjected without his free consent to medical or scientific experimentation. Paras 1 and 2 of Article 8 of the ICCPR deal with right against slavery, slavery-trade and servitude in all forms.\textsuperscript{99} Para 3 of Article 8 provides a right against forced or compulsory labour. Article 9 provides the right to liberty and security of a person. According to it, no one shall be subjected to arbitrary arrest or detention or exile, and no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Further, it confers a right to be informed, at the time of arrest, of the reasons for arrest and to be promptly informed of any charges against him. Persons arrested or detained on a criminal charge is to be brought before a judge and is entitled to trial within a reasonable time or to release. The provision also declares that persons awaiting trial shall, as far as possible, not be detained in custody. However, according to it, release may be subject to guarantees from such a person to appear for trial. The lawfulness of one’s detention and can be challenged before the competent court and the victim of unlawful arrest or detention is guaranteed an enforceable right to compensation.

Article 10 of the Covenant provides that persons deprived of their liberty must be treated with humanity and in particular, with respect for their inherent dignity. Further, the provision provides that accused persons must be segregated from convicted persons and treated separately and appropriately. Similarly, the provision also makes a classification in providing safeguard to juveniles, that is, an accused juvenile person must be treated separately from adults, considering their tender age and juveniles must be brought at the earliest for adjudication. Article 11 of the ICCPR provides protection from imprisonment in the case of inability to fulfil a contractual obligation. Article 12 of the Covenant holds that the above-mentioned rights shall not be subject to restrictions except

\textsuperscript{98} Article 5 of the UDHR is the corresponding provision for this protection.
\textsuperscript{99} This is same as Article 4 of the UDHR, 1948.
those provided by law, or as are necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

According to Article 13 of the ICCPR, an alien lawfully in the territory of a State Party may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or persons especially designated by the competent authority. Article 14 of the Covenant declares that all persons are equal before the courts and tribunals. Accordingly, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. It further holds that “The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”.

Under Paras 2 and 3 of this Article, persons charged with a criminal offence have the right to be presumed innocent until proved guilty according to law and in the determination of any criminal charge. Indeed, the said provision provides that “everyone shall be entitled to the following minimum guarantees, in full equality: (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) to be tried without undue delay; (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the
same conditions as witnesses against him; (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court; and (g) not to be compelled to testify against himself or to confess guilt”.

Article 14 on the lines of Article 10 of the Covenant holds that accused juveniles must be sent to rehabilitation. It further provides that all convicted persons have the right to submit their conviction and sentence to review by a higher tribunal without discrimination. Where such tribunal discovers that conviction in question resulted in injustice the victim shall be compensated according to law. The Article incorporates both *autrefois* convict and *autrefois* acquit principles. Article 15 confers a safeguard to be tried and punished only in accordance with law and a right against higher penalty. The provision emphasises that a change in law that reduces sentence can benefit the offender. Article 16 provides that everyone have the right to recognition everywhere as a person before the law.\(^{100}\) Article 17 provides a right against arbitrary or unlawful interference with his privacy, family, home or correspondence, and unlawful attacks on his honour and reputation and a right to the protection of the law against such interference or attacks.\(^{101}\) Article 18 of the Covenant comprehensively deals with freedom of thought, conscience and religion, which includes freedom to have or to adopt a religion or belief of his choice, and freedom, to manifest his religion or belief in worship, observance, practice and teaching. At the same point of time, the provision provides that right guaranteed is subject only to such limitations as are prescribed by law or as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. States Further, the provision states that States Parties must respect the liberty of the parents and/or legal guardians to choose the religious and moral education of their children.

Article 19 of the Covenant provides a right to hold opinions without interference, right to freedom of expression with freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The same may only be restricted as provided by law and as necessary, for respecting the rights or reputations of others, for

\(^{100}\) The corresponding protection is seen under Article 6 of the Declaration. This in turn equips the individual to have the protection guaranteed by Article 17.

\(^{101}\) Article 12 of the Declaration deals with the same right.
the protection of national security, public order, public health or morals. Article 20 casts an important obligation on the member States to prohibit by law any agenda of war and of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Article 21 of the Covenant recognises the right of peaceful assembly. Article 22 of the Covenant provides a right to freedom of association with others. This right of association includes in it the right to form and join trade unions for the protection of one’s interests which is subjected to restrictions prescribed by law or as are necessary in the interests of national security, public safety, public order, or public health or morals or the protection of the rights and freedoms of others.

Article 23 states that men and women of marriageable age have right to marry and found a family and the same is entitled to protection by society and the State. It also provides right against forced marriages and the States have to ensure that spouses in marriage have equality of rights and responsibilities during marriage and at the time of its dissolution. In the case of dissolution, States have to make provision for the necessary protection of any children.\textsuperscript{102} Article 24 states that every child, without discrimination, is entitled to right of protection and the right to acquire a nationality. Article 25 of the Covenant provides for the right to opportunity, without any of the distinctions. This right includes in it the right to take part in the conduct of public affairs either directly or through chosen representatives; the right to vote and free expression of the will of the electors and right to have access to public service in one’s own country.\textsuperscript{103} According to Article 26, all persons are equal and are entitled to the equal protection of the law without any discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 27 of the Covenant guarantees ethnic, religious or linguistic minorities the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 46 prohibits interpretation that impairs the provisions of the Charter of the United Nations and of the constitutions of the specialised agencies. Similarly, Article 47 states that nothing in the Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilise fully and freely their natural wealth and resources. Instead,

\textsuperscript{102} This conferment is similar to Article 16 of the Declaration.

\textsuperscript{103} This conferment is same as provided in Article 21 of the Declaration.
the States Parties have the responsibility to comply with the obligations of the Covenant. Under Part IV of the Covenant, Articles 28 to 45 deals with Human Rights Committee, which deals with the implementation of the Covenant.

The Human Rights Committee consist of eighteen members and is composed of nationals of the States Parties who are persons of high moral character and possess recognised competence in the field of human rights and legal experience. Each State Party of the Covenant may nominate maximum of two persons who are nationals of the nominating State. The members of the Committee are elected by secret ballot from a list of persons and they serve in their personal capacity and are eligible for re-nomination. The members of the Committee are elected for a term of four years. However, the terms of nine of the members elected at the first election expires at the end of two years; immediately after the first election, and by lot the Chairman of the meeting chooses the names of these nine members.

The Secretary-General of the United Nations provides the necessary staff and facilities for the effective performance of the functions of the Committee. The Committee meets as provided in its rules of procedure. Twelve members constitute a quorum and decisions of the Committee are made by a majority vote of the members present. The States Parties to the ICCPR submit reports on the measures they have adopted to give effect to the rights and indicate progress made in the enjoyment of those rights. Such report must be first submitted within one year of the entry into force of the Covenant and thereafter whenever the Committee so requests. All reports are submitted to the Secretary-General of the United Nations, who in turn transmits those reports to the Committee for necessary consideration. The Committee has emphasised that reports must indicate the factors and difficulties affecting the implementation of the Covenant. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialised agencies concerned copies of such parts of the reports as may fall within their field of competence. The Committee studies the reports submitted by the States Parties and transmit its reports with such general comments as it may consider appropriate, to the States Parties and if necessary to the Economic and Social Council along with required comments and the copies of the States reports.
Article 41 of the Covenant provides that the competence of the Committee to receive and consider communications concerning other States’ compliance can be recognised by a State Party at any period. It is necessary for such a State Party to make a declaration on the same. In default of this condition if any State sends communication to the Committee then it may not consider such communications. Further, this provision provides that if a State considers that another State Party is not giving effect to the provisions of the Covenant then it may by written communication bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State must in writing clarify the matter. This must include reference to domestic procedures and remedies taken, pending, or available in the matter. If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State can refer the matter to the Committee, by notice given to the Committee and to the other State. In that circumstance, the Committee ascertains all communications and subsequently holds closed meetings while examining communications. The Committee strives to bring a friendly solution of the matter based on respect for human rights and fundamental freedoms as recognized in the Covenant. During the procedure, the Committee may call upon the States Parties concerned to supply any relevant information and the States have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

Subsequently, the Committee within twelve months after the date of receipt of notice must submit a report. If a solution is reached, the Committee records a brief statement of the facts and of the solution reached in its report; and where a solution is not reached, the Committee records a brief statement of the facts; the written submissions and particulars of the oral submissions made by the States Parties concerned attached to the report. The report then is communicated to the States Parties concerned. In addition, under Article 45 of the ICCPR, the Committee has the obligation to submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities. Article 42 of the Covenant provides that if a matter referred to the Committee in accordance with Article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties
concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The Commission strives to arrive at an amicable solution of the matter. The Commission consists of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached elects by secret ballot by a two-thirds majority vote of the Committee from among its members.

Further, Article 42 of the Covenant provides that the members of the Commission serve in their personal capacity and they are not nationals of the States Parties concerned, or of a State not Party to the Covenant, or of a State Party, which has not made a declaration under Article 41. The Commission elects its own Chairman and adopt its own rules of procedure. The meetings of the Commission are normally held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned. The information received and collated by the Committee is made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. Upon consideration of the matter, the Commission submits to the Chairman of the Committee a report for communication to the States Parties concerned and where the Commission is unable to complete its consideration of the matter within twelve months, it must prepare a report comprising of brief statement of the status of its consideration of the matter. On the other hand, where an amicable solution to the matter based on respect for human rights is reached, the Commission prepares a report consisting of brief statement of the facts and of the solution reached.

4.3.3 Optional Protocols

The First Optional Protocol to the International Covenant on Civil and Political Rights entered into force simultaneously with the Covenant, having received the minimum 10 ratifications or accessions.\(^\text{104}\) Under Article I of the Optional Protocol, a State party to the Covenant that becomes a party to the Optional Protocol recognises the

\(^{104}\) http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf
competence of the Human Rights Committee to receive and to consider communications from the individuals subject to its jurisdiction who claim to be victims of a violation by that State of any of the rights conferred by the Covenant. However, the condition for making individual communication is that the individuals who make such a claim must have exhausted all available domestic remedies, and they must be solely entitled to submit a written communication to the Committee (Article 2). Thereafter, such communications are determined admissible by the Committee as provided by Articles 2-5 of the Protocol, the communications are to be brought to the attention of the State party that is alleged to have violated a provision of the Covenant. Within six months, that State must submit to the Committee a written explanation or clarifying statement on the matter including the remedy, if any, that it may have applied (Article 4). The Human Rights Committee considers the communications at closed meetings, in the light of all written information made available to it by the individual and the State party concerned. It then forwards its views to the State party and to the individual (Article 5). A summary of the Committee's activities under the Optional Protocol is included in the report that it submits annually to the General Assembly through the Economic and Social Council (Article 6).

The Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty. It entered into force on 11 July 1991 after it received minimum of ten ratifications or accessions as required.\textsuperscript{105} Subsequently, it was adopted by the General Assembly by its resolution number 44/128 of 15 December 1989. According to its Article 1 there is a prohibition of execution. This would mean that no one within the jurisdiction of a State party to the Protocol may be executed. Article 5 of the Second Optional Protocol provides that, with respect to any State party to the first Optional Protocol, the competence of the Human Rights Committee to receive and consider communications from individuals subject to that State's jurisdiction shall extend to the provisions of the Second Optional Protocol, unless the State party concerned has made a statement to the contrary at the moment of ratification or accession. Under Article 3 of the Protocol, States parties must include in the reports that they submit to the Human Rights Committee the information on measures taken to give effect to the Protocol.

\textsuperscript{105} Ibid.
Article 6 of this Protocol states that the provisions of the Second Optional Protocol apply as additional provisions to the Covenant.\textsuperscript{106}

4.3.4 The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)

The ICESCR contains Five Parts and 31 Articles, of which 25 are directly related to economic social and cultural rights, the rest deal with how the agreement under the Covenant is brought into force and other miscellaneous aspects. Firstly, the rights guaranteed under the Covenant are not absolute and they are subjected to limitations. Interestingly, many of such limitations flow from the very nature of the rights and the problems associated with their implementation. The following are the two important limitations. First, full realisation of the rights requires time and progression of the society. This would suggest that a good level of economic development is imperative and upon achieving such a development, the State will be in a position to enforce the economic, social and cultural rights. This would further mean that the developing countries unlike the developed States do face more problems and naturally, they require more time. According to the Covenant, they must be allowed to determine to what extent they would guarantee these rights, with due regard to human rights and their national economy.\textsuperscript{107}

Second, States are permitted to impose limitations of the economic, social and cultural rights, subject to two conditions: (i) that the limitations must be compatible with the nature of the rights, and (ii) that they must be imposed solely for promoting the general welfare in a democratic society (Article 4). No State or any group or person may engage in any activity in destruction of these rights (Article 5 (1)). (iii) many of the rights, such as the right to adequate standard of living and the right to the benefits of scientific and technological advance, depends on international cooperation for their realisation. Article 2 (1) of the Covenant specifically stresses on the importance of international economic and technical cooperation for achievement of full realisation of the rights recognised under it.

The rights guaranteed by the Covenant as mentioned in the case of ICCPR, is quite comprehensive in enumeration of economic, social and cultural rights in

\textsuperscript{106} Ibid.
\textsuperscript{107} International Covenant on Economic, Social and Cultural Rights 1966, Article 2 (1).
comparison to the enumeration by the UDHR. The ICESCR has even added certain additional dimensions. Thus, consideration of the rights guaranteed by the Covenant is required here and the methodology adopted for this discussion is identical to the one adopted for the discussion on the ICCPR.

According to Article 1 of the ICESCR, all peoples have the right of self-determination. By virtue of this right, individuals can freely determine their political status and pursue their economic, social and cultural development. Para 2 of the Article provides for a freedom to dispose of their natural wealth and resources for their own ends. Para 3 imposes an obligation upon the States, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, to promote the realisation of the right of self-determination as well as to respect rights in conformity with the provisions of the Charter of the United Nations. Article 2 of the Covenant provides that States Parties must take steps, 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 realisation of the rights recognized in the Covenant. This may require the States to adopt all appropriate means and measures based on the principle of non-discrimination. Further, the Article reveals that the developing States may determine the extent to which they would guarantee the economic rights recognised in the Covenant to non-nationals. Article 3 of the Covenant obligates the States to ensure equal right of men and women in the enjoyment of all economic, social and cultural rights.

Article 6 of the ICESCR guarantees the right to work (right to work is dealt under Article 23 (1) of the Declaration) which would mean that the States will have to take appropriate steps to safeguard this right. The provision guides the States by stating that the steps may include technical and vocational guidance or training programmes, policies and techniques to achieve steady economic, social and cultural development. Article 7 of the Covenant guarantees the right to just and favourable conditions of work (Article 23 (1) of the Declaration deals with right to just and favourable conditions of work). Article 7 has added more dimensions to the above conferment. According to it, the right to work also ensures remuneration which provides all the workers, a minimum and a fair wage based on the principle of equal remuneration for work of equal value without distinction.
of any kind. In addition, it also guarantees a decent living for workers and their families, a safe and healthy working conditions, equal opportunity for everyone to be promoted in one’s employment to an appropriate higher level subject to seniority and competence; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8 of the ICESCR provides the right to form trade unions and join the trade union of one’s choice, for the promotion and protection of economic and social interests. This right is limited to the limitations prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others (Article 23 (4) of the Declaration deals with the right to join trade unions). Article 9 of the Covenant guarantees the right to social security, including social insurance. Article 10 holds that State must provide protection and assistance to the family for its establishment and for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. Special protection should be accorded to mothers during a reasonable period before and after childbirth. According to this provision, during such period, working mothers would be accorded paid leave or leave with adequate social security benefits. Further, Para 3 of this provision ensures special measures of protection and assistance to all children and young persons without any discrimination for reasons of parentage or other conditions with intent to protect them from economic and social exploitation. Children’s employment in harmful conditions of work or to their morals or health, dangerous to life, or likely to hamper their normal development is demanded to be made punishable by law. States should also set age limits below which the paid employment of child labour is to be prohibited and punishable by law.

Article 11 of the Covenant guarantees adequate standard of living for persons and their family, including adequate food, clothing and housing, and to the continuous improvement of living conditions (This is same as the Article 25 (1) of the Declaration). Further, the provision provides the right to be free from hunger. To ensure this, the State Parties must take, individually and through international co-operation, the measures, including specific programmes, which are needed to improve methods of production, conservation and distribution of food by making full use of technical and scientific
knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources. Besides, the provision also provides the right to the enjoyment of the highest attainable standard of physical and mental health. On the contrary, the States must take steps for the reduction of the stillbirth-rate or of infant mortality. Likewise, it is obligatory for the States to ensure healthy development of the child that requires the improvement of all aspects of environmental and industrial hygiene, prevention, treatment and control of epidemic, endemic, occupational and other diseases. The States must also create conditions that would assure all medical service and medical attention in the event of sickness (Article 12 of the ICESCR).

Article 13 of the ICESCR confers that right to education, which aims at full development of the human personality with dignity. Education must enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. Further, the Article holds that with a view to achieving the full realisation of this right, primary education is compulsory and must be available free of cost to all. Secondary education in its different forms, including technical and vocational secondary education is to be made available and accessible to all by appropriate means, and in particular by the progressive introduction of free education. Higher education must be equally accessible to all, based on capacity, by appropriate means, and in particular by the progressive introduction of free education. Fundamental education must be encouraged by the States or intensified as far as possible for those persons who have not received or completed the whole period of their primary education. Lastly, the Article calls for the development of a system of schools at all levels. The Article also confers liberty to parents and, when applicable, legal guardians to choose for their children schools, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Article 14 of the ICESCR provides that “each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of
charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.” Article 15 of the Covenant provides the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications. It also provides for the enjoyment of benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which one is the author. Therefore, it is obligatory for the States to achieve the full realisation of this right and in addition, the States must resort to conservation, development and dissemination of science and culture.

As to the implementation mechanism, the States parties must implement the rights provided by this Covenant in good faith and for this purpose, it has created mechanism for facilitating the implementation. The mechanism for monitoring the implementation of the Covenant consists of an obligation of States to submit periodic reports to the Secretary-General of the United Nations, the General Assembly, the Economic and Social Council and its 18 members committee on Economic Social and Cultural Rights, and the relevant specialised agencies that deal with economic, social and cultural rights. Indeed, Article 18 of the Covenant provides that “pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialised agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs”.

The Economic and Social Council may transmit to the Commission on Human Rights for necessary study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States and the specialised agencies (Article 19 of the ICESCR). The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialised agencies on the measures taken and the progress made in

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108 V.S. Mani, supra note 27, at pp. 50-51.
achieving general observance of the rights recognized in the present Covenant. (Article 21 of the ICESCR)

Article 22 of the Covenant on Economic, Social and Cultural Rights provides that the Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialised agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

The Committee on Economic, Social and Cultural Rights (CESCR) is responsible for the implementation of the rights guaranteed by the Covenant. It comprises of independent experts and it monitors implementation of the Covenant by its States Parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the Economic and Social Council of the United Nations (ECOSOC) in Part IV of the Covenant. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially within two years of accepting the Covenant and thereafter every five years. The Committee examines each report and addresses its concerns and recommendations to the State Party concerned in the form of “concluding observations”.

Recently, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force on 5 May 2013, conferred the Committee the authority to receive and consider communications from individuals that claim that their rights under the Covenant have been violated. The Committee in addition, may under certain circumstances, undertake inquiries on grave or systematic violations of any of the economic, social and cultural rights set forth in the Covenant, and consider inter-State complaints. The Committee meets in Geneva and normally holds two sessions per year, consisting of a three-week plenary and a one-week pre-sessional

109 http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIntro.aspx
110 Ibid.
111 Ibid.
112 Ibid.
working group. The Committee also publishes its interpretation of the provisions of the Covenant, known as general comments.¹¹³

4.4 Classification of Human Rights

Referring to the timing of their recognition and the sequence of events that were surrounding the recognition, human rights are classified into generations.¹¹⁴ From this perspective, the concept of generations of human rights is a useful analytical tool since it helps to trace the manner and direction in which the human rights tradition has evolved.¹¹⁵ It is important to recollect that the concept of human rights is ever evolving and it is dynamic. The three generations doctrine, as developed by Karel vasak, illustrates how human rights emerged in history.¹¹⁶ Human rights are a product of revolutionary changes inspired by the political thinking of philosophers and the liberation struggles of the oppressed classes.¹¹⁷ In the generation of human rights, first to evolve was the civil and political rights that are known as the ‘first-generation’ or ‘first-dimension’ of human rights. Civil and political rights are the most pertinent and lasting achievements of the American and French Revolutions in the late eighteenth and of other bourgeois revolutions in the nineteenth and twentieth centuries.¹¹⁸ These rights are sometimes analysed as though they involve more than a duty of abstention by the State from interfering with the freedom of its citizens.¹¹⁹ Civil and political rights are the minimum set of rights what one is entitled to being a member of the civilised society. Right to life, right to liberty, right to freedom of speech and expression, freedom of association, right to take part in governance, right to vote, among others, are some of the examples of civil and political rights. Civil and political rights as claimed under the UDHR, 1948 and the ICCPR, 1966 are aimed to be protected by vast number of international and regional conventions on human rights as highlighted in the following parts of this Chapter.

¹¹³ Ibid.
¹¹⁷ Ibid.
¹¹⁸ Ibid.
It is said that “The first-generation rights are libertarian in character, relating to the sanctity of the individual and his rights within the socio-political milieu in which he is located.”\textsuperscript{120} The first-generation rights are absolute and binding, subject to judicial review that is where required the fulfilment of these rights can be demanded in a coercive and direct manner. These rights generate in the State a simple obligation of abstention also known as an obligation of results. This obligation is negative in nature that omits all interference in the individual sphere making it negative freedom by its characteristics.\textsuperscript{121} It is observed, “The value that is protected in civil and political rights is, therefore, basically that of individual freedom, with the active subject par excellence of said rights being the \textit{individual against society}.\textsuperscript{122} The first-generation of subjective provides personal autonomy of the individual and they even enable their participation in a society.

Second-generation rights are the social, economic and cultural rights. They are regarded as gradual rights of a moral character.\textsuperscript{123} Indeed, these rights unlike the first-generation rights require active State participation and positive intervention to confer benevolence or assistance by promoting these rights to the individuals.\textsuperscript{124} They require progressive measures or programmes to be undertaken by the States and they are dependent upon State’s resources. Right to work, right to health, right to food, right to shelter and right to education are some of the examples of the second-generation rights. In particular, economic, social and cultural rights are often considered as non-justiciable and are regarded as fundamental in State governance in several countries including India. It is said, this approach becomes more appealing when one considers it in relation to some civil and political rights.\textsuperscript{125} This proves that second-generation rights are to be understood and respected in the light of its interdependence and inter-relatibility with the first-generation rights.\textsuperscript{126} Further, second-generation rights are distinguished from first

\textsuperscript{121} Fernando Falcóny Tella, \textit{Challenges for Human Rights}, (Leiden, Boston: Martinus Nijhoff-Publishers, 2007), p.64. \\
\textsuperscript{122} Ibid. \\
\textsuperscript{123} Ibid. \\
\textsuperscript{124} Ibid. \\
\textsuperscript{125} Brigit Toebes, \textit{Towards an Improved Understanding of International Human Rights to Health}, Hum. Rts. Q., Vol. 21, No.3 of August 1999, p. 661. \\
generation and the third-generation of rights in the following manner. First-generation rights are the immediate rights, second-generation rights are progressive or programmatic rights and the third generation of rights are the solidarity rights. It is said, “The addition of third-generation of collective rights is an acknowledgement of the essential individualism…”

Indeed, the third-generation of human rights emerged in order to give a name to the rights of solidarity. Development rights are classified as belonging to the third-generation of solidarity rights. These rights include “the rights to development and peace, disaster relief assistance, and a healthy and protected environment constitute the third-generation”. Karel Vasak has mentioned few more rights in this category, they are right to development, the right to peace, the right to environment, the right to ownership of the common heritage of mankind, and the right to communication. The right to development as a specie of solidarity rights has been defined as the right of each people to freely choose its economic and social system without outside interference or constraint of any kind and to determine, with equal freedom, its own model of development.

The International Commission of Jurists defined it as the “right of all people all over the world and of every citizen to enjoy all human rights.” The right to development refers to a process of development that leads to the realisation of each human right and of all of them together and which has to be carried out in a manner known as rights-based, in accordance with the international human rights standards. The third-generation of rights is characterised by having an active subject that enjoys said rights in a collective fashion. It is in addition to individuals the groups, collectives such

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128 Fernando Falcóny Tella, supra note 121, at p.65.
130 Zehra F. Kabasakal Arat, supra note 114, at p.34.
131 Karel Vasak, supra note 129, at p. 761.
132 N. J. Udombana, supra note 120, at p. 762.
as the people, nation, the society or humanity as a whole that has these rights.\textsuperscript{135} The proponents of a third-generation of rights emphasise that these rights will reinforce existing human rights, enhance their effectiveness and make them more relevant to both governments and individuals.\textsuperscript{136}

All generations of human rights contain obligations of conduct that needs to be respected and protected by all appropriate means. The three-generation classification of rights, though it has significant weakness and criticisms against it, it has been useful in helping people to see beyond traditional civil and political framings of human rights, and to think about collective understandings. The classification of human rights into generations is based on the time of evolution of certain human rights. Human rights may also be divided or classified considering the beneficiaries such as rights of the minorities, rights of children, rights of women, rights of labourers, rights of the disabled persons, rights of the vulnerable, rights of the aged, rights of the transsexuals, rights of the homosexuals, rights of the indigenous people, rights of the aliens, and rights of the refugees. These rights are known as rights for specific categories of persons.\textsuperscript{137} Number of thematic studies, research and even conventions has been made on the idea of rights for specific persons.

Both the creation of the categories of generations and what is claimed to be among the third-generation human rights are criticised by many.\textsuperscript{138} Important ones may be summarised as follows. (i) The language of ‘generations’ is inappropriate to be used in the context of human rights classification as generations succeed each other and the so-called ‘generations of human rights’ do not.\textsuperscript{139} (ii) “The concept of generation presupposes a questionable history of human rights: the supposed first two generations were both recognised in the Universal Declaration”.\textsuperscript{140} (iii) It is argued that it is not clear as to who holds these rights and against whom they are held. (iv) The contents of third-generation rights are already contained in established human rights. (v) “A further

\textsuperscript{135} Fernando Falcóny Tella, supra note 107, at p.65.
\textsuperscript{138} Zehra F. Kabasakal Arat, supra note 114, at p.37.
\textsuperscript{139} Ibid.
\textsuperscript{140} Ibid.
problem with the third-generation concept is that it implies a degree of homogeneity among the different constituent rights which is generally not there. The links between, for example, the right to be different and the right to peace are tenuous… the classification of all rights in terms of different generations will sooner or later give rise to the need to proclaim fourth and fifth generations, the latter perhaps consisting of “miscellaneous” rights…”\(^\text{141}\) (vi) it is contended that “…Although the ideological and political debates about human rights continue after the end of Cold War, there is an emerging consensus that all human rights are equally important, indivisible interdependent and interrelated. The division into different dimension or generations has, therefore lost much of its theoretical and practical importance. Above all, the fact that a given human rights belongs to one or another category of human rights tells us very little about its content and the corresponding obligations of the States”.\(^\text{142}\) (vii) it is argued that classification of human rights approach “…pigeonholes rights into rigid clichés, as if one were dealing with watertight compartments, when in reality rights are interrelated to introduce fluid and fluctuating borders…”\(^\text{143}\) (viii) It is said, “the is a risk of theoretical distinction is that of converting the chronological priority into an axiological priority… first generation rights not only into the first ones in time, but also into the most important ones, considering that there are first, second, and third quality of rights.”\(^\text{144}\) Each generation of rights has its distinctive characteristics. The precise content and extent of State obligations must, however, be established on a case-by-case basis for each human right separately.\(^\text{145}\) It is submitted that all human rights are important, as they are indivisible and interdependent. Therefore, classification of rights is mere formality which would mean that thrust must be on making all human rights available to all members of the human family.

4.5 Mechanisms for Enforcement of Human Rights

The States Parties to human rights conventions have primary obligation to respect and promote human rights among all without any discrimination. The human

\(^{143}\) Fernando Falcóny Tella, *supra* note 121, at p.62.
\(^{144}\) *Ibid*.
rights protection mechanisms established at the national, regional and international levels constitute the global system of protection mechanism of human rights. Factually, the concept and practice of human rights developed in national systems. From the time, the UN was established and even until now, it has been taking many initiatives to protect and promote human rights as provided in the Charter of the United Nations. The growth of conventions and institutions at the international level has been facilitating the cause of protection and promotion of human rights as they impose treaty or binding obligations upon the States. In addition, the growth of regional establishments such as the European Convention on Human Rights has strengthened the endeavors undertaken at the international level. Indeed, modeling the European Convention on Human Rights regional protection mechanism is established for Africa and the America, though there are differences in the scope of rights and the method of enforcement contained in those regional Conventions.

This would suggest that the regional systems are not uniform in their structure and composition. On the other hand, there are many advantages in having regional systems, for instance, they share the load of the international human rights protection system, they sensitise the stakeholders across the region in a better manner compared to the international conventions and they even shift the pressure upon neighbouring States to judge offending States in accordance with the principles of the appropriate human rights treaty. The third level at which the human rights are protected is the national system. It acts as a platform for giving legal effect to human rights norms by guarantying in the constitutions and laws. In addition, the national level protection mechanism deals with most violations of rights as the first recourse with the establishment of and assistance of the national courts or other human rights institutions. The protection mechanisms operating at different levels are being integrated through a series of international and regional treaties with intent to give effect to international human rights standards. The following part concisely studies the contemporary human rights protection mechanisms.

4.5.1 Contemporary Human Rights Enforcement Mechanisms

It is said, “Human rights concepts and mechanisms have developed historically along with interventions by civil society and by States. The development of international human rights mechanisms over the past several decades since the adoption of the
Universal Declaration of Human Rights has been linked as much with the rise of pro-democracy and pro-human rights movements around the world as with the end of the Cold War and the growing interdependence of States, markets, and peoples.\textsuperscript{146}

The UN human rights protection system is the most important component of the international human rights framework. The UN human rights system comprises of Charter-based bodies that are established under the Charter of the United Nations, 1945, and the Treaty Bodies, which are created by a human rights treaty. It is said, of the two, it is the Charter-based bodies which seek to uphold international human rights in general, while treaty-based bodies address compliance with human rights in the particular treaty under which they are established.

\textbf{4.5.1.1 Treaty Based System of Protection and Promotion of Human Rights}

International human rights treaties play a chief role in the global human rights regime, and unlike declarations, treaties are binding legal documents. Indeed, “To understand why States commit to treaties, one must begin by considering what effect the treaties will have on them once they have joined. In other words, the anticipated positive and negative effects of international laws on States deeply influence the choice of States to accept international legal commitments in the first place. Because international treaties are not binding on States unless they choose to be bound, the effects of treaties depend on who agrees to be bound. And who agrees to be bound, in turn, depends on the treaties' likely effects.”\textsuperscript{147} Usually, human rights treaties specify the rights of persons which the States must respect. Where States assumes obligations under a human rights treaty it stands for obligation of the States to its citizens, other State parties and their citizens.

After the adoption of the UDHR, the UN had to prepare binding international human rights instruments. Accordingly, on 9 December 1948, the General Assembly had adopted the first United Nations human rights treaty that is the Convention on the Prevention and Punishment of the Crime of Genocide.\textsuperscript{148} It is said, Post-Cold War ideological rift between civil and political rights on the one hand and economic, social,


and cultural rights on the other were bridged by the inclusion of both families of rights in the Declaration. Yet, “this rift re-emerged during the subsequent two decades when it became obvious that the polarised world around the table was not ready to allow the same fusion when preparing binding legal instruments”. Thus, in 1966, the UN adopted individually the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its First Optional Protocol. Followed by this, the United Nations had adopted the International Convention on the Elimination of All Forms of Racial Discrimination. Undoubtedly, these three treaties not only provided but also established human rights monitoring mechanisms in the form of treaty bodies. Further, the treaty bodies were established under the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

Generally, the treaty bodies are composed of independent experts elected in their individual capacities though proposed by national Governments. Their main mandate includes examination of periodic reports submitted by the States Parties. The treaty bodies consider the measures taken by those States to implement their treaty obligations. Moreover, the Human Rights Committee, a treaty body under the Covenant on Civil and Political Rights empowered under the Optional Protocol to the said Covenant, the Committee on the Elimination of Racial Discrimination (CERD) authorised under the optional Article 14 of the Convention Against Racism, and the Committee Against Torture (CAT) under Article 22 of the Convention Against Torture examine individual complaints. In general, the treaty-based bodies discharge the following functions. They scrutinise and comment on periodic reports submitted by States Parties once in every four to five years concerning their efforts to implement and comply with the treaty in question. Further, the treaty bodies adjudicate complaints submitted by the individuals relating to alleged breaches of rights and in addition, they adjudicate complaints submitted by States Parties regarding alleged breaches carried out by another State of their obligations under the relevant treaty. The treaty bodies also inquire into serious or systematic treaty violations by States parties, which are based on reliable information.

149 Elsa Stamatopoulou, supra note 146.
However, it is submitted that individual communication is not integrated into all treaty based human rights protection mechanisms. For example, the Economic, Social and Cultural Rights Committee can only hear individual and inter-state complaints provided for in the ICESCR's Optional Protocol. Surprisingly, some treaty based mechanisms cannot even hear inter-State communications. For instance, there is no provision in the Convention on the Rights of the Child for the Committee on the Rights of the Child established under it to receive individual or inter-State complaints. Generally it is observed that most treaty bodies are quasi-judicial bodies and they can issue ‘General Recommendations’ and ‘General Comments’ in response to issues concerning interpretation of the relevant treaty or as response to State-reports. However, they are not legally binding but they do provide authoritative guidance on the interpretation of the treaty in question. For example, General Comment Number 15 of the Economic, Social and Cultural Rights Committee made a significant contribution to clarifying the content of the right to water as a self-standing human right. Under the Convention Against Torture, the Committee Against Torture (CAT) is empowered by Article 20 of the Convention to receive information and to institute inquiries concerning allegations of systematic torture in the States Parties. This competence of the Committee is optional, however, States may submit a declaration recognising the Committee’s competence to receive complaints from or on behalf of individuals. Further, Article 21 of the Convention provides that a State must declare the Committee’s competence to receive complaints from another State. The Optional Protocol to the Convention Against Torture which came into force in June 2006 establishes a system of regular visits to places where people are deprived of their liberty. The Sub-Committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment undertakes this endeavour and it even has the right to visit any place of detention and have access to all detainees and documents.

The Convention on the Elimination of Racial Discrimination establishes a procedure that makes it possible for an individual or a group of persons who claim to be victims of racial discrimination to lodge a complaint with the Committee on the Elimination of Racial Discrimination against their State. Group can also send communications about systematic practice of racism and this is unique feature of this
Convention. According to the said Convention, the State Party must declare that it recognises the competence of the Committee to receive such complaints (Article 14). All complaints procedures are confidential, the meetings of the implementing bodies are closed and the working documents are not released to the public. The Optional Protocol to the Convention on the Elimination of Discrimination Against Women entered into force in December 2000. This optional Protocol establishes a mechanism for individuals to file claims alleging violations under Convention on the Elimination of Discrimination Against Women (CEDAW) to the Committee on the Elimination of Discrimination Against Women. In addition to the reporting procedure, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which entered into force on 5 May 2013, provides that the Committee is competent to receive and consider communications from individuals claiming their rights under the Covenant have been violated. The authority of the Committee on the Rights of the Child to receive individual communication is in the status of “soon to come”.

From the above considerations, it would be clear that the mechanisms adopted by most treaty-based bodies for the purpose of protection and promotion of human rights are generally similar. Thus, the other treaty-based bodies and their mechanisms may not be taken here for detailed discussions. The principal treaty based monitoring bodies in operation are: (1) The Human Rights Committee under the International Covenant on Civil and Political Rights 1966; (2) The Committee on Economic, Social and Cultural Rights of the ECOSOC; (3) The Committee on the Elimination of Racial Discrimination, under the International Convention on the Elimination of Racial Discrimination 1965; (4) The Committee on the Elimination of Discrimination Against Women, under the Convention on the Elimination of All Forms of Discrimination Against Women 1979; (5) The Committee Against Torture, under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment 1984; (6) The Special Committee on Apartheid under the International Convention on the Suppression and

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4.5.1.2 Charter Based System of Protection and Promotion of Human Rights

The Charter-based bodies originate from the provisions contained in the Charter of the United Nations. In comparison to treaty-based bodies, the Charter-based bodies hold general and broad mandates. Indeed, numerous bodies established by the Charter of the UN holds a key role in protection and promotion of human rights. Major role of these bodies is promotion and monitoring of compliance with international human rights. The Charter-based bodies include the Human Rights Council, the Office of the High Commissioner for Human Rights, and the Principal Organs of the UN. Of these, a discussion is already held at the beginning of this Chapter as to the role of the Principal Organs of the UN in protection and promotion of human rights. Therefore, excluding those organs, a brief discussion on the Human Rights Council and the Office of the High Commissioner for Human Rights, which are active in enforcing and monitoring compliance with international human rights, is preferred here.

It is pertinent to note that the Human Rights Council (the Council) has substituted the Human Rights Commission from 2006.\footnote{UN General Assembly Res. 60/251 (2006).} The Human Rights Commission had made significant contribution to the development of jurisprudence of human rights before it was replaced by a more efficient system, which is the Human Rights Council. The Council is responsible for promoting universal respect for the protection of all human rights and it addresses situations of violations of human rights, including gross and systematic violations. The Council makes suitable recommendations thereon.\footnote{Ibid. Paras 2 and 3.} Its entire endeavour indeed is guided by the principles of universality, impartiality, objectivity and non-selectivity.\footnote{Ibid. Para 4.} The Council generally meets three times a year and if the need be it can hold additional special sessions to address human rights emergencies.\footnote{For example, on 2 December 2011, the Council held a Special Session on the human rights situation in Syria that was in addition to its general annual meeting.} Para 5 of the Resolution under which it is formed identifies the roles and functions that the Council must undertake. Para 5 is divided into promotion, protection and interactions with wider...
human rights machinery. In relation to promotion, the Council must promote human rights within individual States, human rights education and learning as well as render advisory services, technical assistance and capacity building. (Para 5 (a)). Sub-Para (b) requires the Council to serve as a forum for dialogue on thematic issues on all human rights. Sub-Para (c) authorises the Council to make recommendations to the General Assembly for the further development of international law in the field of human rights.

The Council monitor compliance of State obligations as provided under the Charter of the United Nations through the Universal Periodic Review (UPR). The UPR assesses member States' human rights records. Thereafter, it provides technical assistance to improve member States' abilities to effectively respond to human rights challenges, and in this regard, the Council shares best practices in human rights with the States and other stakeholders. Under the “Institution-Building of the United Nations Human Rights Council” (Resolution 5/1) a new complaint procedure is established by the Council to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any corner of the world and under any circumstances. The said complaint procedure attempts to address communications submitted by the victims of human rights violations who could be individuals, groups, or non-governmental organisations. Under this system, the Council carries out the consideration of reports confidentially, with intent to augment cooperation with the State concerned. This apart, in accordance with its Resolution 16/21, the Council takes special apposite procedures to collect complete information on human rights violations and thereafter to deal with it effectively. For this purpose, the Council may avail the services of an individual called “Special Rapporteur” or “Independent Expert” or a working group composed of five members, one from each of the five United Nations regional groupings: Africa, Asia, Latin America and the Caribbean, Eastern Europe and the Western group.

The Special Rapporteurs, Independent Experts and members of the Working Groups appointed by the Council serve in their personal capacities and they undertake to

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158 See http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/ Pages/HRC Complaint Procedure Index.aspx
159 See http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx
160 Ibid.
uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith. Every such mandate-holder’s tenure, whether it is a thematic or country mandate, is limited to a maximum of six years.\textsuperscript{161} The special procedures also comprises mission of country visits, to act on specific cases of alleged violations, to carry thematic studies, to engage in advocacy and raise public awareness and provide advice for technical cooperation and to contribute to the development of international human rights standards.\textsuperscript{162}

As far as the Office of the United Nations High Commissioner for Human Rights (OHCHR) is concerned, it supports the work of the High Commissioner for Human Rights, who is appointed by the Secretary General of the United Nations. The High Commissioner for Human Rights is the official with principal responsibility for human rights which represents commitment to universal ideals of human dignity. Therefore, the OHCHR aims to promote and protect all human rights. The OHCHR educates and takes all necessary action to empower individuals and assist States in upholding human rights. It undertakes theme based studies which throws light upon the process of integration of human rights in development and in the economic sphere.

This apart, generally, the OHCHR assist and aid the work of the United Nations human rights mechanisms, including the treaty bodies established to monitor State Parties' compliance with the international human rights treaties and the Special Procedures of the Human Rights Council. Amongst other objectives, the High Commissioner for Human Rights works to promote universal ratification and implementation of international human rights treaties and support the efforts of the Human Rights Council and the treaty bodies.\textsuperscript{163}

**4.5.1.3 The Regional Systems**

It is important to note that there are many instruments at the regional level, of them, few have broad mandate to protect human rights for instance, the American Convention or the European Convention on Human Rights, while others have theme-based mandates for instance, conventions relating to child, vulnerable group, women, and

\textsuperscript{161} Ibid.
\textsuperscript{162} Ibid.
\textsuperscript{163} See http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx
minorities, though in a broader sense these instruments are related to human rights. The latter kinds of conventions are not discussed here. The objective behind this is to analyse some of the larger regional systems such as the American Convention on Human Rights, European Convention on Human Rights and African Charter that have become standard-setter for subsequent theme-based or general instruments for human rights protection. It is also to be noted that vast number of regional conventions are dedicated for promotion of civil and political rights, and handful Conventions deal with economic, social and cultural rights. The coverage of those categories of rights undertaken by the Conventions and their Protocols also differ but they are annexed to the same core principles on which the international instruments or larger regional conventions operate. Thus, the discussion is limited only to the aforementioned principal regional systems.

It is said, “Beginning with the adoption of the European Convention on Human Rights in 1950, the trend to elaborate regional standards continued with the adoption of the American Convention on Human Rights in 1967, which was subsequently followed by the African Charter on Human and Peoples’ Rights, adopted in 1981. Various other regional treaties have been elaborated in an effort to render the protection not only of civil and political rights, but also of economic, social and cultural rights, more efficient.”

Regional and national systems contribute to the global system and regional system in particular is a kind of midway between the International Human Rights Law and State institutions that have responsibility to implement human rights. Regional systems offer a number of advantages, such as flexibility and responsiveness to region-specific needs that the global system would be unable to address.

The regional systems for the protection of human rights functions based on the rules set out in the regional conventions that created them. Interestingly, each convention in its Preamble links it to the Universal Declaration of Human Rights and the Charter of the United Nations. For instance, the European Convention, provides that through the agreement to establish the treaty and its institutions, the Governments of European countries which are like-minded and have a common heritage of political traditions,
ideals, freedom and the rule of law have resolved, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights.\textsuperscript{166}


The American Convention on Human Rights, 1969 (herein referred to as the American Convention) entered into force on 18 July 1978. The American Convention focuses on civil and political rights. However, according to Article 26 of the American Convention, apart from giving recognition to the civil and political rights, the States parties must in general terms undertake to adopt measures, both internally and through international co-operation to achieve progressively by appropriate means and thereby create conditions for the full realization of the rights found in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States and as amended by the Protocol of Buenos Aires. Article 27 of the American Convention provides for derogation from the obligations in emergencies. According to this provision, a State party can only resort to derogations in time of war, public danger, or other emergency that threatens the independence or security of a State Party. It is submitted that this provision is slightly distinct from Article 4 of the ICCPR 1966. This is because Article 4 of the ICCPR, 1966 provides derogation of rights during public emergency, which threatens the life of the nation. While Article 27 of the American Convention recognises derogations in time of war, public danger, or other emergency that threatens the independence or security of a State. Secondly, the list of non-derogable rights provided in the Covenant and the American Convention are not common. Para 2 of Article 27 recognises the list of provisions that are non-derogable. They are Articles 3: right to juridical personality; 4: right to life; 5: right to humane treatment; 6: freedom from slavery; 9: freedom from ex post facto laws; 12: freedom of conscience and religion; 17: rights of the family; 18: right to a name; 19: rights of the child; 20: right to nationality; and 23: right to participate in Government.

\textsuperscript{166} The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, Preamble.
Further, according to Article 27 of the American Convention, a State party may derogate from its obligations under the Convention only to the extent and for the period strictly required by the exigencies of the situation. The provisions also emphasises that any such derogation must not be inconsistent with the other obligations of the State under international law and derogation must not involve discrimination on the ground of race, colour, sex, language, religion, or social origin. Para 3 of Article 27 insists that the State must immediately inform the other States Parties, through the Secretary-General of the Organization of American States, of the provisions suspended, the reasons that gave rise to the suspension, and the date set for the termination of that suspension.

The Convention has established Inter-American Commission on Human Rights (hereinafter referred to as the American Commission) and Inter-American Court of Human Rights (hereunder referred to as the American Court) as implementation machineries. According to Articles 34 and 36 of the American Convention, the Inter-American Commission on Human Rights consists of seven members elected in their personal capacity that shall primarily promote respect for human rights and shield human rights. The American Commission also has the obligation to develop awareness on human rights, make recommendations to Governments of the member States, prepare appropriate studies and reports as it considers fit in the performance of its duties, and to take action on petitions and other communications pursuant to its authority under the American Convention. Article 44 provides that the American Commission receive petitions from any person or group of persons, or any non-governmental entity legally recognised in one or more member States of the Organization of American States concerning complaints of violation by a State Party.

As to the inter-State complaints system, the State concerned must recognise the competence of the American Commission to examine communications brought against another State party by a declaration (Article 45(1) and (2)). Every individual petition or inter-State communication submitted to the American Commission will be admitted subject to the fulfilment of certain conditions and these conditions are similar to those that have been previously discussed in connection with Human Rights Committee under the ICCPR, 1966 and thus will not be repeated here. The American Commission can collect additional information and such other details as it may require in the light of
consideration of a petition and even it can make an on-the-spot investigation and hear oral statements in addition to written submissions as provided by Article 48 (1) (d) and (e) of the American Convention.

The American Commission can also declare the petition or communication inadmissible or out of order or unsubstantiated (Article 48 (1) (c)). The American Commission has the obligation to make efforts to reach a friendly settlement of the matter based on respect for the human rights recognised in the American Convention and if a settlement is not reached, the American Commission will have to prepare a report setting forth the facts and stating its conclusions, which will be submitted to the States parties. However, if, after a prescribed period, the matter has not been settled or submitted to the American Court, the American Commission may set forth its opinion and conclusions concerning the question submitted for its consideration and may in cases where the State concerned fails to take “adequate measures”, ultimately decide to publish its report as provided in Article 51. The American Commission also has the powers to request advisory opinions from the Inter-American Court of Human Rights as per Article 64 of the American Convention.

The Inter-American Court of Human Rights consists of seven judges elected in their individual capacity (Article 52) and its Secretariat is in San Jose, Costa Rica. As per Article 61 (2), the procedure before the American Commission must be completed to come before the American Court. On the other hand, the American Court is given the discretion to consider urgent cases at the request of the American Commission (Article 63(2). The American Court’s judgments are final and binding (Articles 67 and 68 (1)). Both the American Commission and the Court have dealt with a large number of cases, the same is traceable in their respective annual reports, and these reports provide important information concerning their activities in general.

The General Assembly of the Organization of American States (OAS) in 1988 adopted the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, to make State Parties to undertake to adopt measures, both internally and through international co-operation and thereby to achieve progressively by appropriate means and to provide suitable conditions for the full realisation of the rights implicit in the economic, social, educational, scientific, and
cultural standards set forth in the Charter of the OAS. Subsequently, in 1990 the General Assembly also adopted the Protocol to the American Convention to Abolish the Death Penalty. According to Article 1 of this Protocol, States shall not apply the death penalty in their territory to any person subject to their jurisdiction. Article 2 (1) of the Protocol creates an exception to this standard by stating that reservations may be made to this Protocol, at the time of ratification or accession and that they may reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.

The enforcement mechanism under the Additional Protocol in the Area of Economic, Social and Cultural Rights differs from the procedures under the American Convention as in that the States parties only undertake to submit periodic reports on the progressive measures adopted to ensure due respect for the rights set forth therein under the Protocol. Secondly, Protocol provide for application of the complaints procedure before the American Commission and Court only in certain matters such as complaints relating to right to organize and join trade unions (Article 8 (a)) and the right to education (Article 13) and in matters of alleged violation where that is directly attributable to a State party (Article 19 (6)).

The European Convention on Human Rights, 1950, and its Protocols Nos. 1, 4, 6 and 7

The Council of Europe adopted the European Convention on Human Rights in 1950 (hereinafter referred to as the European Convention). The European Convention protects civil and political rights, primarily through the European Court of Human Rights and formerly the European Commission was the second mechanism. Indeed, “The Convention originally created both a European Commission and a European Court of Human Rights entrusted with the observance of the engagements undertaken by the High Contracting Parties to the Convention, but with the entry into force of Protocol No. 11 to the Convention on 1 November 1998, the control machinery was restructured so that all allegations are now directly referred to the European Court of Human Rights in
Strasbourg, France. This Court is the first, and so far only, permanent human rights court sitting on a full-time basis”.167

Certain rights guaranteed by the European Convention are amenable to restriction that may be imposed by State Parties. They are dealt under Articles 8-11 and Article 1 of Protocol No. 1 (the right to freedom of movement) and Article 2 of Protocol No. 4 (Residence). Any such restriction must be imposed only in accordance with the law and they must be necessary in a democratic society for instance, in the interests of public safety, for the protection of public order, health or morals, the prevention of disorder or crime or the protection of the rights and freedoms of others. Article 15 of the European Convention being similar to Article 27 of the American Convention on human Rights provides for derogations from legal obligations in exceptional situations. According to Article 15 (2) of the European Convention, the following Articles cannot be derogated from, 2: right to life, except in respect of deaths resulting from lawful acts of war; 3: freedom from torture; 4 (1): freedom from slavery and servitude; and 7: no punishment without law. Under Protocols Nos. 6 and 7, no derogations can be made from the provisions concerning the abolition of the death penalty and protection against double jeopardy. Other conditions relating to the derogation is similar to the American Convention.

As to implementation mechanism under the European Convention, it originally had provided for the European Commission on Human Rights (herein referred to as European Commission) and the European Court of Human Rights (herein referred to as the European Court). It is important to note that this implementation system has been restructured in the year 1998 and accordingly the European Commission is rested from its obligations. Consequently, the European Court is given the primary and the exclusive responsibility in matters of human rights. Article 19 of the European Convention states that all alleged violations of the rights and freedoms guaranteed by the Convention and its Protocols are referred directly to the European Court, which shall ensure the observance of the engagements undertaken by the High Contracting Parties.

The European Court of Human Rights consists of a number of judges equal to that of the Contracting Parties, and the Court is permanent in nature. According to Article 27 of the European Convention, the European Court may sit in committees of three judges, in Chambers of seven judges or in a Grand Chamber of seventeen judges. Under Article 33 of the European Convention the European Court is empowered to receive inter-State communications or complaints and in pursuant to Article 34 of the European Convention it can even receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The European Court does not deal with an application of any kind unless domestic remedies have been exhausted and the application has been submitted within six months from the date on which the final decision was taken (Article 35 (1)). With regard to individual applications, it must not be anonymous or substantially the same as a matter that has already been examined by the European Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information (Article 35 (2)).

The European Court decides on the admissibility and merits of the case and, if necessary, undertakes an investigation. After having declared a case admissible, it aims to secure a friendly settlement of the matter based on respect for human rights as defined in the Convention and the Protocols thereto (Article 38 (1) (b)). Hearings before the Court are public, unless it decides otherwise in exceptional circumstances (Article 40). Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional circumstances, request that the case be referred to a Grand Chamber. If the request is accepted then the Grand Chamber decides the case by means of a judgment that is final (Articles 43 and 44). Usually, the judgment of the Chamber will be final when the parties declare that they have no intention of requesting referral to the Grand Chamber; or three months after the judgment in the absence of such a request; or, finally, when the request for referral has been rejected (Article 44). Such judgments cast obligation on the State Parties to execute under the supervision of the Committee of Ministers of the Council of Europe (Article 46).
Protocol No. 1 was adopted in 1952 and it provides additionally for the following rights: the right to peaceful enjoyment of one’s possessions (Article 1); the right to education and the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (Article 2); and the holding of free elections at reasonable intervals by secret ballot (Article 3). Protocol No. 4 of 1963 entered into force on 2 May 1968 and it has added the following rights to be protected: the right not to be deprived of one’s liberty merely on the ground of inability to fulfil a contractual obligation (Article 1); the right to freedom of movement and of residence; the right to leave any country, including one’s own (Article 2); the right not to be expelled from the country of which one is a national and the right not to be refused entry into the State of which one is a national (Article 3); and prohibition of the collective expulsion of aliens (Article 4).

Protocol No. 6 of 1983 came into force on 1 March 1985 and it deals with abolition of the death penalty, and it provides under Article 2 that a State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war. There is prohibition against derogations and reservations to this Protocol (Articles 3 and 4). Protocol No. 7, adopted in 1984, extended the scope of the Convention by providing for the following additional protection: certain protections against arbitrary expulsion of aliens lawfully resident in the territory of the High Contracting Parties (Article 1); the right to appeal against a criminal conviction (Article 2); the right to compensation in case of a miscarriage of justice (Article 3); the right not to be tried again for the same offence within the jurisdiction of the same State (Article 4); and equality of rights and responsibilities between spouses as to marriage, during marriage and in the event of its dissolution (Article 5).


The African Charter on Human and Peoples’ Rights entered into force on 21 October 1986 (Herein referred to as the African Charter). The African Charter contains a long list of rights, covering both civil and political rights and economic, social and cultural rights. Unlike the International Covenant on Civil and Political Rights and the American and European Conventions on Human Rights, the African Charter does not
provide for derogation of rights in public emergencies. Articles 27-29 of the African Charter provide for individual duties. The African Charter has also created the African Commission on Human and Peoples’ Rights with an objective to promote human and peoples’ rights and ensure their protection in Africa as provided in Article 30 of its Charter. In 1998, the Protocol to the Charter on the Establishment of an African Court of Human Rights was also adopted.

Articles 30 and 31 of the African Charter deal with the composition of African Commission on Human and Peoples’ Rights. According to it, the Commission consists of eleven members who serve in their individual capacity. The Commission has twin core functions. First function is to promote human and peoples’ rights, while second is to protect those rights. Among other functions, which are primarily associated with its core functions, it receives communications both from States and from other sources, collect documents, undertakes studies and it undertakes researches on African problems. The African Commission also conducts conferences and encourages domestic human rights institutions. Besides, it formulates and lays down principles and rules directed towards solving legal problems relating to human and peoples’ rights and lastly it cooperates with other African and international institutions concerned with the promotion and protection of human rights. This obligation flows from Article 45 of the African Charter.

As to the implementation procedure or mechanisms followed by the Commission in furtherance of its mandate, there are three important mechanisms: one, inter-state communication, communication from other sources, and period reports. Each will be addressed succinctly. According to Article 47 of the African Charter, in inter-State communications system, if a State party has good reasons to believe that another State Party to African Charter has violated the provisions then it may draw the attention of that State to the matter by a written communication. At the receipt of such communication, the addressed State has the obligation to submit a written explanation. Indeed, from the date of receipt of such communication the addressed State would be provided with three months of time to provide explanation. Article 48 of the African Charter provides that if the matter has not been settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either of the State can bring it to the attention of the Commission. Article 49 of the African Charter, by its nature a ‘non-
obstante clause’, states that notwithstanding the abovementioned provisions, a State Party can refer the matter directly to the Commission only if all local remedies have been exhausted in the case or according to Article 50, if the procedure of achieving these remedies would be unduly prolonged. Article 51 provides the authority for the States concerned to be represented before the Commission and submit written and oral statements. The Commission upon collecting all necessary information and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples’ Rights, it shall prepare a report stating the facts and its findings, which shall be sent to the States concerned and to the Assembly of Heads of State and concerned Governments (Article 52). According to Article 53 of the African Charter, the Commission may make recommendations, as it deems useful, to the Assembly of Heads of State.

In the second mechanism, that is the African Commission may consider the communications from sources other than States Parties. However, the African Charter does not explicate whether it is competent for the Commission to deal with individual complaints. What it does provide for in Article 55 is that Commission, its Secretary shall make a list of the communications other than those of States Parties and transmit them to the members of the Commission, who shall indicate which communication should be considered by the Commission. Every such communication must fulfil certain conditions. Conditions are that the communication must indicate the author, it must be compatible both with the Charter of the OAU and with the African Charter, it must not be written offensive language, it must not be founded on news disseminated through the mass media, it must be submitted only after all domestic remedies have been exhausted, it must be submitted within a reasonable period from the time local remedies are exhausted, and lastly, the communications must not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the United Nations, the Charter of the OAU or the African Charter. Article 56 of the African Charter provides these conditions.

The African Commission has the onus of drawing the attention of the Assembly of Heads of State and Government to some special cases, upon which the latter may then request the Commission to undertake an in-depth study of cases and make a factual
report, accompanied by its findings and recommendations (Article 58 (1) and (2)). Lastly, in periodic reports system, the States Parties undertake to submit under Article 62, every two years a report on the legislative or other measures taken with a view to giving effect to the terms of the African Charter and the Commission on Human and Peoples’ Rights proceeds to examine those reports in public sessions.

4.5.1.4 National System

The idea of domestic remedies in case of breach of human rights brings belief in its utility. The basis for the national human rights protection system lies in giving recognition to the international human rights standards and to the International Human Rights Law in the State’s constitutions and other laws. In addition, specific or special enactment can be introduced for this purpose as India has done with the enactment of Protection of Human Rights Act 1993. The special enactment may be used to reiterate the international human rights standards or even to supplement and complement those international human rights standards contained in the Constitution. Lastly, most national systems generally establish certain specific institutions or National Human Rights Institutions (NHRIs), such as the National Human Rights Commission or the State Human Rights Commission in India to look after the human rights issues.

4.5.1.5 National Human Rights Institutions (NHRIs)

NHRIs are defined by the UN as a body that is established by a Government under the Constitution or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights. It is said, “The first NHRIs were established in the 1970s, with growing numbers established in the following decades. Today there are around 100 NHRIs operating around the world. While no two national human rights institutions are the same, they share common functions such as: monitoring the State to ensure that it meets its international and domestic human rights commitments, receiving, investigating and resolving complaints of human rights violations, and raising awareness and providing human rights education for all parts of

the community”. NHRIs have increased in number since the year 1993 and this is because the General Assembly had formulated the idea to encourage the States to establish and to avail services of NHRIs in their endeavours to protect and promote human rights.

NHRIs are primarily the organisations that are established by the appropriate Governments with the specific purpose of promoting and protecting human rights at the national level. The roles of NHRIs usually, among others, include dissemination of information on human rights, promoting human rights literacy, addressing discrimination in all its forms, studying human rights violations and making recommendations to the Government on human rights issues. Most NHRIs are given specific agenda to protect civil and political rights, while some are given the agenda to protect and promote second-generation rights, whereas others function like an Ombudsman and possess powers to investigate accusations of corruption. The motive behind the establishment of NHRIs is that to respect the rights of individuals and to pursue the responsibilities of the State. They operate and function autonomously from Government and the same is clear from the Paris Principles.

The Paris principles advocate that NHRIs have a broad mandate and thus they have responsibilities to promote and ensure the harmonisation of national legislation and practices with the international human rights instruments to which a State is a party, to encourage ratifications and ensure their implementation, to contribute to the reports that States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and lastly to cooperate with the United Nations system, regional and national institutions that are competent in the areas of protection and promotion of human rights. Accordingly, many NHRIs are effectively discharging their obligations and thereby effectively contributing to the cause of protection and promotion of human rights. However, the NHRIs do not have power to take actions against the defaulter. They can only refer the matter to the competent

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169 http://www.asiapacificforum.net/establishment-of-nhris/what-is-an-nhri
170 The Paris Principles set out the minimum international standards required for national human rights institutions to effectively fulfil their role. They include the need for a broad-based mandate; guarantees of independence; autonomy from government; pluralism of members and staff; adequate powers of investigation; and adequate resources. See The Paris Principle Res. 1992/54, endorsed by the UN General Assembly Res. 48/134, 20 December 1993.
171 Ibid., para 3.
authority for appropriate actions and at the most thereafter follow the proceedings. Therefore, NHRIIs are regarded as another way of ensuring accountability of the Government.\textsuperscript{172}

\textbf{4.5.1.6 Non-Governmental Organisations and International Organisations}

Globally, either the champions of human rights have been citizens and/or the Non-Governmental Organisations. Various Non-Governmental Organisations around the world make their efforts with dedication to study and highlight human rights issues with intent to sensitise the international community to indulge in active protection of human rights. A list of NGOs with consultative status within the UN is contained in the Yearbook of the UN. ‘Amnesty International’, ‘Children’s Defence Fund’, ‘Human Rights Action Center’, ‘Human Rights Watch’, ‘Human Rights Without Frontiers’, and ‘Simon Wiesenthal Center’ are some of the well-known NGOs that are committed to human rights issues. It is said, Non-Governmental organisations (NGOs) “have played an important role in the overall development of the human rights movement since the early 1800s. It was then focused on the abolition of slavery and humanitarian assistance in armed conflicts. Some organisations deserve special attention, such as the anti-Slavery Society, which lobbied actively for the abolition of slavery at the Vienna Congress in 1815, and the International Committee of the Red Cross founded in 1859 by Henri Dunant, a Swiss national who had been profoundly affected by his experience at the battle of Solferino the same year…”\textsuperscript{173} Indeed, as on date, the NGOs have expanded their areas of operation and consequently they handle many more human rights issues than previously. Besides, the influence factor of NGOs has grown globally.

This apart, a large number of NGOs have formal affiliation or association with Inter-Governmental Organisations (IGOs), such as the United Nations. It is submitted that this is a significant progress because it benefits both the IGOs and NGOs in terms of availing and sharing of information, statistics and databank on human rights issues. Some of the IGOs, including the UN have agreed to grant the NGOs a consultative or an


observer status. For instance, the UN General Assembly has granted observer status to the International Committee of the Red Cross (ICRC) and to the International Federation of Red Cross and Red Crescent Societies. However, it is pertinent to note that there are numerous NGOs that does not have such formal relationships. This trend is more witnessed in particular at local level. Nevertheless, the NGOs continue to contribute in the cause of promotion and protection of human rights.

It is observed that the United Nations Organisation has been making efforts, since its inception, to describe its relationship with the NGOs. Indeed, Article 71 of the Charter of the United Nations, 1945 has provided that the Economic and Social Council may make suitable arrangements for consultations with NGOs, which are concerned with matters within its competence. “…An important purpose of this system is to enable organisations representing important elements of public opinion in a large number of countries to express their views as well as to “secure expert information or advice from organisations having special competence in the subjects for which consultative arrangements are made”.

‘Human rights NGOs’ utilise various strategies in their work towards achieving compliance with international human rights standards as they deal with diverse stakeholders. For achieving efficiency in their work, the NGOs have commenced to focus on specific activity concerning human rights. For instance, standard setting, promotion or technical assistance, dissemination of information, and pursuing Governments to comply with international human rights standards, among others. It is also noted that there are some NGOs that combine several of these activities in their programmes. The United Nations Commission on Human Rights has developed certain models to aid the activities of the NGOs, for instance, the model of an “inquiry” or “investigation”; the model of a “comprehensive study”; the model of "urgent measures" or "interim measures" to examine their effectiveness for violations in specific circumstances. It is important to note that human rights NGOs and organizations maintain websites documenting violations elaborately and they call for remedial action, both at a governmental and grass roots level. This is because, “Public support and condemnation of abuses is important to

175 Maja Kirilova Eriksson, supra note 173.
their success, as human rights organizations are most effective when their calls for reform are backed by strong public advocacy”.  

The next important contributor or the major player in the field of protection of human rights is the International Organisations (IOs). These are created between the States, either on bilateral or multilateral terms and today there are thousands of them. Many organisations deal with protection and promotion of human rights. For instance, United Nations Organisation, European Union, European Commission, African Union, Organisation of American States and many more to be listed. Treaties or statutes create IOs and the mandate of such IO determines its structure.

While there is no doubt, those IOs are major players in protection and promotion of human rights but they are not substituted for the States. The first part of this Chapter has dealt with the role of the UN and from that, it is sufficient to understand its contribution to protection of human rights, and many other organisations generally have followed the framework of the UN. The IOs develop wide network with different stakeholders such as member countries, non-member countries, individual and independent experts, courts, tribunals, media, NGOs, NHRIs, individuals and other organisations at international, regional and domestic levels. This would make them find important information as to a fact relating to human rights concerns. However, on the other side, it is observed that the mechanisms available to hold them accountable for alleged violations of their human rights obligations are relatively underdeveloped, and in some cases non-existent. 

4.6 Scope and Ambit of International Human Rights Standards

The international community has developed norms, institutions and mechanisms to protect human rights of all living human beings. The human rights treaties aim to protect and promote all human rights based on principle of non-discrimination, and equality. The International Bill of Human Rights contains essential rights that are aimed

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to be protected and promoted by all States. Those rights have become international human rights standards for the States to achieve.

The Bill of Rights confers recognition to both first and second-generation of rights, of which the former is imperative and the latter is programmatic for the States. Because of this fact, the States had taken relaxed approach to give effect to the second-generation rights until the United Nations’ Committee on Economic and Social Council developed a concept of “minimum core.” This concept seeks to establish a minimum legal content for the claims of economic and social rights.\textsuperscript{178} The Committee on Economic and Social Council has reported that, “a State party in which any significant number of individuals is deprived of essential food stuffs, essential primary health care, basic shelter and housing or of the most basic forms of education is, prima facie, failing to discharge its obligations under the Covenant…”\textsuperscript{179}

Any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) of the ICESCR, 1966 obligates every State Party to make use of the maximum of its available resources and to take the necessary steps by which States can create an environment wherein all economic, social and cultural rights can be enjoyed by all without any discrimination. This would mean that if a State party unable to meet at least its minimum core obligations due to lack of resources then it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.\textsuperscript{180}

In the original articulation of the minimum core, the Committee on Economic and Social Council did not refer to examples of cultural rights, despite the inclusion of cultural rights within its mandate. In 2005, the said Committee purported to correct this imbalance by issuing a General Comment\textsuperscript{181} on the aspects of cultural rights protected


\textsuperscript{180} Ibid.

under the ICESCR, and including a definition of a “minimum core” of cultural rights.\textsuperscript{182} The minimum core approach serves as a means for exploring the use of human rights standards in the context of the Third World poverty. Minimum core principle ensures that the States Parties have an immediate obligation to ensure the discharge of minimum obligations for all subjects within their jurisdiction. In addition, for giving effective implementation to human rights norms, the UN has developed the United Nations Development Programme (UNDP). The UNDP aims to work to achieve the eradication of poverty and the reduction of inequalities and exclusion. The UNDP requires the States to pledge to achieve the Millennium Development Goals (MDGs), including the goal of cutting poverty in half by 2015.\textsuperscript{183} The UNDP also provides assistance to countries to build and share solutions in three main areas, sustainable development, democratic governance and peace building, and climate and disaster resilience.

As to the other observations on scope and ambit of international human rights standards, it is to be noted that human rights depends on States for their enforcement and the States have sovereign authority to decide as to extent of obligations that may be undertaken by it by becoming a party to a particular human rights treaty. In this way, the States may give recognition to certain human rights standards while they may not with reference to a few other obligations depending upon the State’s development and available resources to give effect to its obligations under the treaty. Therefore, to analyse human rights standards undertaken by a State, the constitution and other laws that are enacted in that particular country needs to be considered. In India, the Government has provided recognition to some of the international human rights standards and it has not specifically recognised a few of them. This is discussed in detail in Chapter V. Human rights standards established under the International Human Rights Law have certain limitations.

First limitation is that human rights are not absolute and they are subjected to reasonable restrictions, which the States may impose from time to time. For instance, Article 29 of the UDHR states that everyone has duties to the community in which alone the free and full development of his personality is possible. Secondly, the provision holds

\textsuperscript{182} Katharine G. Young, \textit{supra} note 178, at pp. 118-119.
\textsuperscript{183} See http://www.undp.org/content/undp/en/home/operations/about_us.html
that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Further, it provides that these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Right of everyone to liberty of movement and freedom to choose residence guaranteed by Article 12 (1), and the freedom of everyone to leave any country, including his own as guaranteed by Article 12 (2) of the ICCPR are not absolute. Article 12 (3) of the ICCPR states that the abovementioned rights shall not be subject to any restriction except those which are provided by law and as are necessary to protect national interests, security, public order, public health or morals or rights and freedom of others, and are consistent with the rights recognised by the ICCPR.

Similarly, Article 4 of the ICESCR provides that the States Parties to the Covenant recognise that, in the enjoyment of those rights provided by the State in conformity with the Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. Article 8 (1) (a) of the ICESCR provides that no restrictions may be placed on the exercise of the right of everyone to form trade unions and join the trade union of his choice, other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others. These illustrations highlight that human rights are not absolute.

Second limitation to international human rights standards is the possibility of formulation of reservations by the States to human rights treaties. International human rights treaties are mostly multilateral or bilateral in nature. Every State Party is expected to agree to be bound by all the obligations contained in a treaty. However, acceptance of international obligation has many implications on every State, which could, inter alia, be in the nature of adopting of suitable legislative and executive measures, development of necessary resources, finance. Thus, States may resort to ‘reservation’ or ‘declaration’
concerning provisions of a treaty. For instance, India has formulated reservation in respect of certain provisions of the ICCPR and ICESCR.\textsuperscript{184}

Reservation can be formulated, accepted and withdrawn in accordance with the terms of the treaty and where a treaty to which reservation has to be formulated remains silent on that fact, the provisions of the Vienna Convention of 1969 is usually followed. Articles 19 to 23 of this Convention deals with reservation to a treaty. Reservation is a “unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”\textsuperscript{185} On the other hand, ‘declaration’ reflects a State’s understanding of a specific provision without excluding or modifying that provision in its application to that State. The implications on State Parties as mentioned above become the reason for the State’s hesitation to be bound by all obligations under a human rights treaty.

Why States may resort to reservation? The implications on the States as mentioned above may be seen as the effects, which a State invites upon itself by becoming a party to a treaty. For instance, if a State becomes a party to a human rights treaty.

\begin{itemize}
\item a) With reference to Article 1 of the International Covenant on Economic, Social and Cultural Rights and Article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the words ‘the right of self-determination' appearing in [this article] apply only to the people under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation, which is the essence of national integrity.
\item b) With reference to Article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the Article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of Article 22 of the Constitution of India. Further, under the Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.
\item c) With respect to Article 13 of the International Covenant on Civil and Political Rights, the Government of the Republic of India reserves its right to apply its law relating to foreigners.
\item d) With reference to Articles 4 and 8 of the International Covenant on Economic, Social and Cultural Rights, and Articles 12, 19 (3), 21 and 22 of the International Covenant on Civil and Political Rights the Government of the Republic of India declares that the provisions of the said [article] shall be so applied as to be in conformity with the provisions of Article 19 of the Constitution of India.
\item e) With reference to Article 7 (c) of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares that the provisions of the said Article shall be so applied as to be in conformity with the provisions of Article 16(4) of the Constitution of India.”
\end{itemize}


\textsuperscript{184} The Indian Government has ratified the International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 on March 27, 1979 with certain reservations. By ratification, it has established on the international arena its willingness to cohere to the Covenants. Reservations :

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\item e) With reference to Article 7 (c) of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares that the provisions of the said Article shall be so applied as to be in conformity with the provisions of Article 16(4) of the Constitution of India.”
\end{itemize}


\textsuperscript{185} The Vienna Convention on the Law of Treaties 1969, Article 2(1) (d).
treaty that needs the States to fulfil some obligations like establishing a normative framework that is in conformity with the treaty standards or it requires the creation of NHRIs in the State, then these obligations has direct bearing on finances of the State, and in case of the former requirement, time is essential. If a State requires time or in that given point of time, the State does not have financial capacity to manage additional expenditures to meet the international obligation, then it may resort to formulation of reservation subject to the terms of the treaty.

The consequences of a reservation to human rights treaties are trifold. Firstly, it lowers the minimum human rights standards contained in a particular treaty for the reserving States. Secondly, it dilutes the principle of universality of human rights and frustrates the attempts of the international community to establish a universally accepted human rights regime. Thirdly, it enables the reserving States to escape international accountability for human rights violations. These consequences are a concern for the international community and thus the international community is persuasive and urges to States that reservations must be avoided and where it is inevitable it may be allowed but States must think of withdrawing those reservations at the earliest.

Third limitation is that human rights are amenable to derogation. The ICCPR and the regional human rights Conventions such as the American Convention on Human Rights and the European Convention on human Rights provide for derogation from the obligations in emergencies, under the respective instrument. It is observed that derogation is an exception for the obligations and the same is governed by the principles contained in the instruments. Generally, the principles include that the States may derogate from its obligations under the respective instrument only in times of public emergency existing in the nation. Further, States must derogate only upon information being given either through the competent authorities named under the respective instrument or by giving information to other State Parties as to the reasons for derogation. Derogating State must mention the reason for and duration of derogation and as to the provisions identified for that purpose. In addition, it is common among most instruments to identify certain provisions as ‘non-derogable’ and in such cases, the States cannot derogate from those obligations in any circumstance including emergency. The list of derogable rights and

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non-derogable rights vary from one instrument to another and the same was, \textit{inter alia}, highlighted in this study under Regional System.

This apart, the rights conferred by the ICESCR are ‘programmatic’ in nature. The economic, social and cultural rights have to be progressively realised through affirmative steps to be taken by the State Parties. Also, Article 2 (3) of the ICESCR states that developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals. Therefore, not all the rights conferred by the ICESCR have binding effect on the State Parties as the State has to attain competence to implement the obligations contained in the Covenant and this may result in derogation of some economic, social and cultural rights by the States.

\textbf{4.8 Conclusion}

Human rights are protected through various instruments that operate at the international, regional and national levels. The role of the UN is significant when the subject matter is human rights protection, it has developed International Bill of Human Rights, norms and various mechanisms in accordance with its mandate to protect observe and promote human rights among all nations. Right to life, right to privacy, right to movement, right to work, right to education, right to security, freedom of religion, right against torture, degrading and inhuman treatment, right to fair trial, right to just conditions of work, right to medical assistance, right to compensation, and right to remedy, among others, are recognised in the International Bill of Human Rights. Human rights treaties depend on States for enforcement, and as such, it depends upon the extent of human rights obligations undertaken by the State at the time of becoming a member to a human rights treaty. Human rights treaties are legally binding and independently monitored. The UN adopted two human rights Covenants in 1966: ICESCR, and the ICCPR, and the rights conferred by them are further recognised by several regional human rights treaties. Human rights treaties codify a diversity of rights belonging to different categories of persons, and some enjoy more support than others do. The international human rights treaties have established varieties of human rights protection mechanisms such as reporting procedure, inter-state communication, conciliation, individual communication and adjudication by human rights commission or court, which
are adopted *mutatis mutandis* by the regional system. Human rights treaties have contributed to important changes in the laws of many countries, it is clear from the fact that there are large number of treaties that States have ratified, acceded or adhered to. Lastly, the regional and national systems are playing an important role in protection and promotion of human rights and this observation holds good in so far as the role of certain non-state actors such as NGOs, NHRIIs and the IOs. The scope of international human rights standards or their protection mechanism is not absolute as it is subjected to certain limitations such as enforcement of human rights depends on States, non-absoluteness of human rights, derogation of human rights in public emergency, State reservations and declarations.