CHAPTER-II

UNITED NATIONS' ROLE IN IMPLEMENTATION OF HUMAN RIGHTS
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Today we are witnessing some kind of an incremental growth in the Human Rights movement all over the world. Important changes in the international scene like disintegration of the Soviet Union and ending of the cold war have given a fillip to the world-wide movement for observance of and respect for human rights. Human rights have become the normative political language of the present age. Human rights are based on mankind's demand for a life in which inherent dignity and worth of a human being will receive respect and protection. These rights apply to everyone from the fact of being human, irrespective of race, sex, occupation, material status or other characteristics. They are the essential liberties taken for granted as the basis for a just and civilized society and are not subjected to political bargaining or calculation of social interest.

In Western countries international human rights initiatives were preceded by struggles for advancement of individual civil and political rights. The English Magna Carta and Bill of Rights, the French Declaration of the Rights of Man (1789) and the American Declaration of Independence (1776) which announced that, "We hold this truth to be self-evident that all men are created equal" significantly contributed to the Western traditions of individual and civil rights. But it was only after the First World War that the Versailles Treaty (1919) created permanent mechanisms for international supervision of violation of human rights. The 1919 Treaty set up a Mandate system for governing territories taken from the German and Ottoman Empires. Administering powers accepted as a 'sacred trust' the responsibility for the well-being of the people placed under their charge.
A Permanent Mandates Commission was set up and the individuals could petition to the League of Nations through the Permanent Mandates Commission to redress their grievances. For the first time some nation states became accountable to an international body for the mistreatment of individuals subjected to their rule.

In states separated from the German and Ottoman Empires like Yugoslavia, Greece, Romania, Czechoslovakia, it was decided to provide through 'minorities treaties' essential human rights to the minorities of these states. A supervisory machinery was also set up. The instrument guaranteed 'protection of life and liberty', equality of civil and political rights and free use of the mother tongue. To enforce their rights the minorities could petition the League Council directly. The Covenant of the League of Nations, however, did not include any general reference to human rights. Thus international efforts to protect and enforce human rights before the Second World War were tentative and sporadic and involved only a few target states and narrow groups of rights. Inherent weaknesses of this patchwork system created by the League of Nations were exposed by Hitler's sinister acts of aggression. Hitler occupied Czechoslovakia with the ostensible plea of protecting the German minority of that state.

SECOND WORLD WAR

The Second World War witnessed not only tremendous loss of lives and properties but ruthless degradation of human rights and values. The untold atrocities committed by the Axis powers on religious and ethnic groups and minorities shocked the conscience of the civilized world. The harrowing experience of the Second World War gave rise to the conviction that effective international protection of human rights is one of the essential conditions of international peace and progress. The United Nations which arose like a phoenix out of the ashes of the Second World War put utmost stress on 'promotion and fostering of human rights and basic freedoms'.
The concern of the United Nations with the promotion and protection of human rights stems directly from the realization by the international community that recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Even during the continuance of the Second World War, the Allied powers started planning for a new stronger international organization. The United States, United Kingdom, U.S.S.R. and later on China, met to plan a post-war international security organization. Initially, none of the organization’s general purposes referred to human rights. In 1945, the Big Four sponsoring states invited the other states to discuss the Dumbarton Oaks proposals at a conference at San Francisco. The San Francisco deliberations which culminated in the adoption of the U.N. Charter made promotion of human rights one of the main functions of the international organization and a specific responsibility of the General Assembly and Economic and Social Council (Ecosoc). The sponsoring powers also recommended a special commission under Ecosoc for the promotion of human rights.

U.N. CHARTER

The preamble of the U.N. Charter reaffirmed “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. The purposes of the United Nations are listed in Article 1 of the Charter of which the third paragraph reads: “To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. The promotion and encouragement for human rights is an undertaking to be carried out for all. Human rights are thus universal
and all inclusive. The provisions in the Charter also place emphasis on equality or non-discrimination which is closely linked with the concept of universality. Indeed they mutually reinforce each other. Article 55 of the Charter provides:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people, the United Nations shall promote: ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

INTERNATIONAL BILL OF HUMAN RIGHTS

The Charter of the United Nations does not further define the contents of human rights. The framers of the Charter left this task to the organization itself, and it was decided for this purpose that an International Bill of Human Rights should be drawn up.

The International Bill of Human Rights comprises (a) Universal Declaration of Human Rights (1948), (b) International Covenant on Economic, Social and Cultural Rights (1966), (c) International Covenant on Civil and Political Rights and (d) Optional Protocol thereon providing for the right of the individual petition. They form the four constituents' parts of the International Bill of Human Rights and these texts can be considered as authoritative interpretation of the human rights clauses of the Charter of the United Nations.

UNIVERSAL DECLARATION

A little before midnight on December 10, 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in Paris. Mrs. Eleanor Roosevelt, who chaired the session, expressed the hope that the Declaration would become the 'Magna Carta'
of all mankind. The Universal Declaration of Human Rights is a milestone in the history of the human rights movement. The international community now accepted the obligation that promotion and protection of human rights becomes one of its permanent obligations and abiding concerns. It is now recognized that the Universal Declaration has become a part of the customary International law because of its unanimous adoption by the General Assembly without a single dissenting vote and its repeated affirmation in many subsequent resolutions of the General Assembly. Many member states have incorporated in their constitutions many of the provisions of the Universal Declaration of Human Rights.

Lauterpacht in his book "Manual of International Law" has said "it is idle to attempt to kindle sparks of legal vitality in Universal Declaration by regarding it as a recommendation of the General Assembly and by enquiry into its legal effects as such". The Declaration has today become a part of the customary international law because of the emergence of a juridical consensus. Whatever be the intention of its authors in 1948, it has now become binding as a part of the law of nations. The General Assembly adopted a Declaration on the granting of Independence to Colonial Countries and People, in 1960. The final paragraph of the Declaration mentioned that "all states shall observe faithfully and strictly the provisions of the Universal Declaration of Human Rights". Again, on 4th December 1963, the Security Council adopted a resolution which speaks of apartheid as being "in violation of South Africa's obligation as a member of the United Nations and of the provisions of the Universal Declaration of Human Rights". The Security Council was obviously using the Declaration of interpret the Charter.

The Universal Declaration of Human Rights consists of a preamble and 30 articles setting forth the basic human rights and fundamental freedoms to which all men and women everywhere in the world are entitled.
without discrimination. The Universal Declaration of Human Rights indicates two sets of rights - the traditional civil and political rights (Articles 2 to 21) and the new economic and social rights (Articles 22 to 28). The Constitution of India incorporates the first set of rights under the Fundamental rights (Articles 12 to 35 of the Constitution) and the second set under Directive Principles (Articles 36 to 51). The Fundamental Rights incorporated in Part III of the Constitution had been described by Dr. S. Radhakrishnan as 'a pledge to our people and a pact with the civilized world: 'Article 13(2) of the Constitution declares 'all laws and executive orders inconsistent with fundamental rights to be ultravires and void'.

CATEGORIES OF HUMAN RIGHTS

Human rights can be classified into various categories. The current distinction is between civil and political rights on one hand and economic, social and cultural rights on the other. The Universal Declaration of Human Rights comprises in one major document both these categories of human rights. However, these two major categories of human rights were incorporated in the two International Covenants on Civil and Political rights and on Economic, Social and Cultural rights. There was a rationale behind these classifications. It was felt that while one set of rights was subject to immediate application, the other set required progressive realization. Therefore different implementation measures are called for. However, a very rigid demarcation between these two sets of rights cannot be made. Indeed human rights are inter-dependent and indivisible. The Declaration on the Right to Development, 1986, states "All human rights and fundamental freedoms are indivisible and inter-dependent. Equal attention and urgent consideration should be given to implementation and protection and promotion of civil, political, economic, social and cultural rights".
Indeed it is incorrect to think that some of the basic economic rights are mere claims or aspirations and are not human rights because they cannot be enforced. This kind of thinking suffers from the fallacy that negative rights which gather around our liberties are more important than positive rights that evolve from our needs. It should never be forgotten that poverty is one of the most potent causes of the violation of human rights. Justice Bhagwati speaking for the Supreme Court in the case of Francis Coralie Mullen has, by an expansive interpretation of Article 21 of the Constitution. Incorporated the right to food, clothing and shelter in the expression ‘life’ in Article 21 of the Constitution. “The question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head”.

The subsistence rights have been recognized in Article 25 of the Universal Declaration: ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothes, housing, medical care and necessary social services’.

The Resolution which approved the Universal Declaration of Human Rights also decided that Covenants containing legal obligations to be assumed by states and measures for their implementation should be prepared. After a long history of preparation the Covenants for Economic, Social and Cultural Rights (1966) and for Civil and Political Rights (1966) were eventually adopted and opened for signatures. These Covenants are international legal instruments. When member states ratify the covenants, they accept the obligation to give the force of law to the rights they proclaim.
GENERAL ASSEMBLY AND SUBSIDIARY BODIES

Under Article 13 of the United Nations Charter, one of the functions of the General Assembly is to initiate studies and make recommendations for the purpose of "promoting international cooperation in the economic, social, cultural, educational and health fields, and assisting in the realization of human rights and fundamental freedoms of all without distinction as to race, sex, language or religion. "Since the adoption of the Universal Declaration of Human Rights in 1948, the General Assembly has adopted numerous declarations and conventions concentrating on human rights. They deal among other things with genocide, racial discrimination, apartheid, refugees, stateless persons, the rights of women, slavery, children, torture, disabled and mentally retarded persons etc.

ECONOMIC AND SOCIAL CULTURAL AND SUBSIDIARY BODIES

Under Article 62 of the United Nations Charter, the Economic and Social Council may make "recommendations for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all". Under Article 68, the Council "shall set up Commissions in economic and social fields for the protection of human rights". To assist it in dealing with matters relating to human rights, the Council has set up the Commission on Human Rights and the Commission on the Status of Women. The Commission on Human Rights, in turn has established a Subcommission on Prevention of Discrimination and Protection of Minorities. The Council has also, on occasions, authorized the Secretary General to appoint Special rapporteurs or committees of experts to prepare reports on technical subjects.

COMMISSION ON HUMAN RIGHTS

The Commission on Human Rights was set up by the Economic and Social Council of the United Nations in 1946 and has met annually since
then. It is the main body of the United Nations dealing with human rights issues. The Commission, originally made up of 18 members, was responsible for drafting the International Bill of Human Rights. Now it is composed of the representatives of 43-member states elected for a 3-year term. They only comprise the Commission and have a right to vote. The Commission may also invite any state for participating in deliberations on matters which are of concern to that particular state. The Commission may ask specialized agencies and some other inter-governmental and also non-governmental organizations to participate in the Commission's deliberations on matters which are of concern to them. The Commission makes studies, prepares recommendations, drafts international instruments relating to human rights. It also performs special tasks assigned to it by the General Assembly and the Economic and Social Council, including investigation into allegations concerning human rights. It cooperates closely with other bodies of the United Nations which are also dealing with the various issues of human rights.

The Commission has established a number of subsidiary bodies including a Sub-Commission on Prevention of Discrimination and Protection and Education of Minorities. It has also set up organs investigating human rights problems in specific countries and regions as well as on thematic situations. Some of these groups are (a) Adhoc working group of experts on South Africa, (b) Working group to examine situations which appear to reveal a consistent pattern of gross violation of human rights, (c) the Working Group on involuntary disappearance and (d) the Working Group of Experts on the Right to Development. It has also set up such fact-finding bodies of experts consisting of rapporteurs to study the situation of human rights in specific countries such as in Afghanistan, Chile, Iran, Guatemala or on thematic situations such as Arbitrary Executions, Religious Intolerance, Massive Exoduses and Mercénaries etc.
HUMAN RIGHTS COMMITTEE

An optional protocol adjunct to the Covenant on Civil and Political Rights establishes a Human Rights Committee to receive communications from the individuals who claim to be victims of violation of human rights. This Committee is the main rights body of the U.N. examining every year about thousands of complaints concerning violations human rights. It hold open dialogues with governments on human rights abuses and has been able to provide help the victims in many cases. Several countries have changed their rules and laws as a result of the decisions by the Committee on individual complaints under the optional protocol. In a number of cases prisoners have been released and compensation paid to the victims of human rights violations as a result of intervention by the Committee.

The Human Rights Committee works by consensus, but individual members can go on to record their separate views on the merits of a case. This has happened on a number of occasions. From the latter part of 1980 due to greater public awareness of the Human Rights Committee's role the number of complaints received from the individuals regarding violation of human rights has sharply increased. In all, about 2585 communications from individuals involving 33 states parties have been examined by 1991.

A state may submit communications before, the committee alleging that another state is not fulfilling its obligations under the Covenant, but this can happen in cases where both the parties have communicated that they recognize the Committee's right to receive and consider such communications. On 31st December, 1990, 30 state parties had made similar declarations. The Human Rights Committee, unlike the European Court of Human Rights and the European Commission on Human Rights, is neither a court nor a body with quasi-judicial mandate. Its opinions expressed in the language of courts are known as “views” and not “judgments”. As the number of states
which ratify the Covenant and optional protocol grows, the influence of the Human Rights Committee will become universal.

COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION

This Committee was established in 1970 in accordance with Article 8 of the International Convention on the Elimination of all forms of Racial Discrimination. It consists of 18 experts of proven moral standing and acknowledged impartiality. Members are elected for a 4-year term by secret ballot at a meeting of the state parties and serve in their personal capacity. The Committee comments on situations involving racial discrimination or draws the attention of the General Assembly to such situations. It indicates issues on which it would like to receive further detailed communications from different states parties. By the end of 1987, there were 124 states parties to the International Convention on Elimination of all Forms of Racial Discrimination of which 12 had also recognized its competence to receive and consider communications from individuals or groups of individuals.

The General Assembly on December 9, 1975, adopted the Declaration on Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Article 2 declares torture as an "offence" against human dignity and as a "violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights". The States are prohibited to "permit or tolerate" torture even in exceptional circumstances such as a state of war or a threat or war, internal political instability or any other public emergency and are obligated to take effective measures against torture. Article 5 lays down comprehensive training of law-enforcement officials against torture. Article 6 requires a system or review of the interrogation methods and practices as well as custodial arrangements.

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The Declaration was followed on December 10, 1984, by a Convention which lays down more elaborate provisions. Unfortunately, India has not ratified the Convention. The Chairman of the National Human Rights Commission in a letter to the Prime Minister, has written that India should immediately ratify the Convention and give effect to its extremely humane and well-worked out norms. The letter says "the greatest tribute that the Republic of India can pay to the Father of the Nation, the apostle of peace, would certainly be our acceptance of the Convention against Torture.

This Committee against Torture was established in 1987 in accordance with Article 17 of the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment. It consists of 10 experts of impeccable moral standing and recognized competence in the field of human rights selected by the states parties to the Convention from among its nationals. Members are elected for a 4-year term and serve in their personal capacity.\textsuperscript{13}

The Committee studies reports on the measures taken by the state parties to give effect to their understandings under the Convention, makes confidential enquiries if warranted, concerning indications that torture is being systematically practiced in the territory of a state party. It performs certain other functions with a view to resolving disputes between the states parties concerning the Convention. By the end of 1987, there were 27 states parties to the Convention against Torture and 10 of which had accepted the competence of the Committee against Torture under Article 21 and 22 of the Convention to consider matters relating to interstate disputes and communications from or on behalf of individuals.
THE CENTRE FOR HUMAN RIGHTS

The Centre for Human Rights located in the United Nations office at Geneva is the Secretariat unit of the United Nations mostly concerned with human rights questions. It is headed by the Under-Secretary General for human Rights who is also the Director General of the U.N. office at Geneva. It serves as the focal point of the United Nations in the field of human rights and provides secretariat and substantive services to the United Nations organizations concerned with human rights. It also collects and disseminates information, prepares publications and coordinates liaison with non-governmental organizations, external institutions and the media on human rights.

ROLE OF INDIA

India as a member of the Commission of Human Rights played a prominent role in the drafting of the Universal Declaration of Human Rights and took an active and effective part in the discussions prior to the framing of the Universal Declaration. Later on, many of the Articles of the Universal Declaration were incorporated in the Indian Constitution in the form of Fundamental Rights (Part III) and Directive Principles (Part IV). India also ratified the two international Covenants on Civil and Political rights, and Economic, Social and Cultural rights. However, at the time of ratifying the International Covenant on Civil and Political rights, the Government of India made certain reservations to the rights and freedoms such as the right to compensation for human rights violations.

India is also an active member of the United Nations Committee on the Prevention of Crime and Treatment of Offenders which formulated several Criminal Justice Administration (CJA) standards. The United Nations Standard Minimum Rules for Administration for Juvenile Justice (The Beijing Rules) have been adopted by the General Assembly in 1985.
These have been substantially embodied in the Juvenile Justice Act, 1986. But many of the Committee’s standards are yet to be adopted by law or State practice in India. One of the most prominent among these is the Caracas Declaration on Basic Principles of Justice for the Victims of Crime and Abuse of Power adopted by the General Assembly on November 29, 1985. The Declaration obligates the Governments to define the laws “prescribing the criminal abuse of power”. India, unfortunately, has no self-contained legislation on behaviour or conduct which amounts to Criminal Abuse of Power. The Declaration also prescribes access to justice and fair treatment and rights to restitution and compensation for the victims or crime. The Declaration lays down that when the compensation is not fully available from the offenders or other sources, the State should try to provide financial compensation to the victims or their families through national funds created by the Government.

Besides, the Convention against torture, India has not ratified the following international instruments:

a) Convention on the Rights of the Migrant workers;

b) Optional Protocol to the International Covenant on Civil and Political rights; and

c) Second optional Protocol aimed at the abolition of the death penalty.

The Covenant on Civil and Political rights made as many as 7 rights and freedoms non-derogable even during a state of emergency. These are (a) right to life (Article 6); (b) freedom from torture or punishment (Article 7), freedom from slavery (Article 8), freedom of thought, conscience and religion (Article 18), prohibition of ex-post facto criminal liability (Article 15). However, Article 359 (1) of the Constitution only makes two rights and

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freedoms non-derogable, protection in respect of conviction (Article 20) and protection of life and personal liberty (Article 21).

UN’s ROLE IN DEVELOPING HUMAN RIGHTS CONSCIOUSNESS

The United Nations has played a great role in developing human rights consciousness. It can be said that internationalization of human rights began with the emergence of the United Nations. Today the message of human rights has spread and inspired people all over the world, and human rights jurisprudence is becoming an important component of any civilized legal system. Violations of human rights have become the legitimate concern of the international community. Warren Christopher, American Secretary of State, told the open session of the World Conference of U.N. Human Rights in Vienna in 1993 “that each of us comes from different quarters absolves none of us from the obligation to comply with the Universal Declaration of Human Rights. Torture, rape, racism, ethnic cleansing, political disappearance are not tolerated by any culture or religion nor can it be justified by the demands of economic development or political expediency”.

The final Vienna document outlined a wide range of human rights issues which are of concern to the international community. The Vienna document restated some fundamental and essential concepts in the approach to human rights viz. an endorsement of the principles of universality, objectivity and non-selectivity. It stressed that democracy, development and respect for human rights are inter-dependent and mutually re-enforcing. It affirmed that States are duty-bound to ensure that education is aimed at strengthening respect for human rights. An Action Programme to improve the channel of human rights was adopted. The Vienna Declaration called on the U.N. and its relevant bodies to proclaim “U.N. Decade for Human Rights” for promoting and proclaiming these rights. The Declaration clearly stated that one of the main causes of
violation of human rights is the phenomenon of terrorism and the external forces which back it.

IMPLEMENTATION OF HUMAN RIGHTS

There is no gainsaying the fact that the implementation of human rights enunciated in the Universal Declaration and various other international Covenants have to be done with much greater vigour and dynamism than at present. Human Rights will remain paper promises unless they are firmly implemented. Implementation procedures in the two great international Covenants are hardly adequate. They do not provide any system of adjudicatory control and enforcement. With the slow and steady crystallisation of human rights into substantive international law, it has become necessary to develop adjectival international law for implementation of such substantive law.

The desirability of a measure of international control is implicit in the very solemnity attached to the Universal Declaration and other international covenants. On the other hand, there is always a fear on the part of states of the loss of certain amount of sovereignty by submitting to international control. There is also the question whether a world organization can adequately deal with human rights problems arising in a state with its own distinct and peculiar tradition and culture. A time thus has now come to think of a new Human Rights Council with greater powers and responsibilities. It can sub-divide itself into regional councils which will be competent to enquire into individual complaints and submit reports for further action to be taken to resolve the disputes. Different regions, particularly, poor and backward ones, have different problems of human rights. The unfortunate fact remains that some of the advanced countries who loudly champion the cause of human rights and freedoms do not hesitate to engineer wars in developing countries in the name of democracy and freedom. For this reason different regional bodies and regional councils
are necessary for implementing international covenants. To some extent the European Commission of Human Rights and the European Human Rights Court may serve as models for other regional bodies.

It is a fact that the European Commission and the European Court of Human Rights set up be under the European Convention of Human Rights, 1950, have made a note-worthy contribution to the human right jurisprudence and granted relief to several individuals against their governments. In the case of Neumeister against Austria, the court held that Neumeister had been detained for an excessive period before trial hence there was violation of Article 5(3) of the Convention which guarantees a right to trial within a reasonable time. In the so-called "Vagrancy" cases against Belgium the court concluded that there was breach of the Convention because the applicants had no remedy open to them before any tribunal for questioning the decision ordering their detention. In the interstate case brought by the Republic of Ireland against the U.K., the court held that the techniques of interrogation of prisoners in Northern Ireland amounted to inhuman and degrading treatment. Consequently they were discontinued. Certain provisions of the U.K. 'Prevention of Terrorism Act' which permitted detenus to be kept in custody for a period of seven days before their production in court was taken up for consideration. The court held that they are not in conformity with Article 5(3) of the Convention which guarantees that detenus should be brought promptly before a judicial tribunal.

Without effective implementation, guarantees of Human Rights in Constitutions and international instruments will remain only as pious promises, which will not satisfy the hungry and impoverished millions of human beings. Widespread poverty among the masses in developing countries is a great cause of denial of human rights. Poverty destroys
human dignity and without human dignity there can be no human rights or the capacity to fight against the denial of human rights.

Further, the problems of human rights in the countries of Asia and Africa are quite different from that in the West. In Western countries, the role of human rights is to fine-tune the administrative and judicial system and fortify rights and freedoms that are largely uncontroversial. "In countries of Asia and Africa, on the other hand, human rights have a transformative potential. They are a constant challenge to vested interests and authority in societies riven by enormous disparities of wealth and power, with traditions of authoritarianism and the helplessness of disadvantaged communities, of militarization and the conjunction of corrupt politicians and predatory domestic and international capital".

It is, therefore, imperative to strengthen movements for effective implementation of human rights in developing countries. For effective implementation what is most needed is the development of a strong, sensitive international human rights conscience, which resolutely acts upon the belief that human rights are indivisible and their protection is the abiding responsibility of the civilized international community. Human rights conscientiation should be the first item in the agenda of any successful human rights movement.

INDIA AND THE U.N. MACHINERY OF HUMAN RIGHTS

BACKGROUND

Human rights issues have increasingly moved to the centre stage of the international agenda, particularly in the UN system. The concern for "human rights", is however, not entirely a new one. Throughout history, every society has sought to define the concept of human dignity, in the sense of seeking to ascertain the qualities and inherent value of each individual and their relationship to society. In different societies at different
times, this question has been answered differently, on the basis of social obligations and duties owned by individuals in terms of social hierarchy based on gender, birth etc., through the assertion of the individual's rights against the arbitrary exercise of power, an emphasis on the quality of life that an individual has the right to enjoy or even the collective rights of communities. Invariably, the ethical, religious or political basis by which each society has attempted answers to the issue of human rights has been moulded to a large extent by the values and systems by which each society has in turn been governed. The effort in this paper has been to:

a) trace the evolution of the concept of human rights as it has come to be understood in international parlance;

b) indicate the mandate and functioning of the various mechanisms within the UN system on human rights issues, and to touch on recent trends that are moulding the concept of human rights and the role of the UN;

c) indicate India's evolving contribution and role in the UN on human rights issues.

HISTORICAL BACKGROUND AND EVOLUTION OF THE CONCEPT OF HUMAN RIGHTS

Human rights, in the sense that it is used in contemporary international parlance, covers a series of rights and freedoms, asserted by many to be universally accepted and to be essential pre-requisites for the enjoyment of a life based on the centrality of human dignity. These rights are often regarded as being "inherent", in so far as they are the birthrights of all human beings, "inalienable" in the sense that people cannot agree to their dilution or deprivation and "universal", in so far as they are not restricted to any gender, ethnic group, etc. but apply to all persons, regardless of their nationality, status, gender and race.
It needs to be emphasized that human rights, as the term or concept is used in contemporary international parlance and certainly in the major international for a such as the UN, derives in large part from the historical struggle, (largely in the West) between the prerogative of the Crown and the rights of the subjects against arbitrary exercise of power leading to an acceptance of certain rights as being so inherent and inalienable that, in effect they were to represent a check on the unbridled prerogative of the Crown. This primary impulse (particularly, the emphasis on so called civil and political rights – right to life, liberty etc.) is reflected in the major human rights landmarks – whether the Magna Carta, the 1689 Bill of Rights, American Declaration of Independence, the 1789 Declaration of the Rights of Man, etc., which in turn have played a seminal role in shaping the current approach to human rights as also the various mechanisms within the UN system of human rights. It needs to be emphasized that these human rights documents cited above, represent an important phase in the evolution of human rights, since the overriding emphasis in all these documents was on the “so called” political and civil rights which seek to effect a check or balance arbitrary exercise of power by the State or the ruler and reflected the historical experience of the West of the individual struggle against the arbitrary exercise of power by authority. The primary impulse of the concept as it evolved, was thus on certain basic guarantees to the individual, particularly the right to life, liberty, against arbitrary detention, etc.

HUMAN RIGHTS IN THE UN SYSTEM

On the eve of the establishment of the UN Charter, three distinct stands were discernible in the concept of human rights:

a) An emphasis, often, though not always, on civil and political rights of the individual vis-à-vis the State;
b) A measure of State accountability to the international community for the condition of its people with the converse implications for the dilution of "absolute" national sovereignty;

c) A further dilution of absolute "national sovereignty" through the assertion of the international community's right to evolve universally applicable normative standards and hold the State accountable for application of these standards and those were to find magnified reflection in the UN and the mechanisms that it would establish on human rights issues\(^2\).

The UN Charter and the International Bill of Human Rights developed in the crucible of the Second World War, contain a comprehensive treatment of Human Rights. Indeed the rights proclaimed by the Universal Declaration are divided into two distinct thematic categories of rights – Civil and Political Rights (Articles 1 to 20) and Economic, Social and Cultural Rights (Articles 21 to 28). This is further reflected in the existence of two separate Covenants – ICCPR and the ICESCR. These three instruments are referred to as the International Bill of Rights. The UN Charter itself was to give expression to these trends and clearly articulated the "legitimate" concern of the international community with human rights. The preamble of the UN Charter states that it: "reaffirms faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

And while the fundamental objective of the UN Charter may well have been the maintenance of peace and security – "saving succeeding generations from the scourge of war", nevertheless, the UN Charter in its preamble, did recognize: "universal protection and promotion of human rights" as an important objective.
To a large extent, the mandate of the UN in the sphere of human rights derives from several provisions of the Charter including:

Article 1 – which defines the UN’s objective as “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

Article 8 – which states that the UN shall place no restriction on the eligibility of men and women to participate in any capacity and under conditions of capability in its principal and subsidiary organs.

Article 13 – which states that the functions, responsibilities and powers of the General Assembly shall include “assisting in the realization of human rights and fundamental freedoms for all”.

Article 55 – which describes the purposes of the UN in pursuing international co-operation, including “universal respect for and observance of human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion”.

Article 56 – which contains a pledge by all UN members “to take joint and separate action in co-operation with the UN” for the achievement of the purposes set forth in article 55.

Article 62 – which refers to the power, responsibilities etc., relating to ECOSOC.

Article 68 – which authorizes the ECOSOC to set up commissions in “economic, social fields and for the promotion of human rights”.

Thus, even at the time of the foundation of the UN, there was a clear acceptance of some form of international accountability by states for their human rights records as also a clear role for the UN, both in evolving norms.
with universal application, and in holding States accountable to these norms – a role that the UN has pursued with some vigour.

The United Nations has pursued its “concern” on human rights through specific organs and subsidiary mechanism, which derives their mandate either directly from the UN Charter, or a resolution of one of these bodies. But at the same time, it has pursued its role through a parallel corpus of International Covenants i.e. mechanisms established under these Covenants i.e., the so-called “treaty bodies” which also constitute part of UN “machinery” on human rights. (These however, need to be differentiated in turn from the corpus of international humanitarian law, norms, overseen by the ICRC, which however will remain outside the purview of this paper). These provisions however have to be read in conjunction with Articles 2 (7) of the UN Charter which does not authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state. This distinction is however getting blurred22.

MECHANISMS / ORGANS DEALING WITH HUMAN RIGHTS DERIVING THEIR MANDATE FROM THE UN CHARTER ON SPECIFIC RESOLUTIONS

The Principal UN organs, with a clearly defined role in the sphere of human rights which derive their mandate from the UN Charter are essentially:

1. The General Assembly
2. Economic and Social Council
3. UN Commission on Human Rights
4. Commission on the Status of Women
(The Commission on the Status of Women was established in 1948. It focuses essentially on Women’s rights).

5. Specialised Agencies – ILO / UNESCO

These Specialized Agencies have, from time to time, made an important normative contribution particularly the ILO, in evolving a corpus of international, universal norms on a range of issues. The ILO alone, has evolved over 300 International Conventions on human rights issues from prohibition of forced labour, rights of indigenous and tribal people, etc. In some cases and this is specifically true of the ILO, effective normative mechanisms have been established. In the case of ILO, National Conventions are supervised by a 20 member Committee of Experts and the ILO provides for a complaints procedure on non-observance by States of ILO obligations.

6. United Nations High Commissioner for Refugees

Established by the UNGA, the UNHCR has both normative and implementation functions – for promoting International Conventions for Protection of Refugees and supervising their application.

7. The International Legal Commission (ILC).

The ILC is not a Charter body per se but was established by the General Assembly (Resolution 174 (II)) and comprises 34 international legal experts elected for a five year term. Its functions and role have been primarily normative, drafting conventions etc. where international law has not evolved sufficiently and important examples of its contribution to setting of human rights standards include its work on a “Draft Code of Crimes against the Peace and Security of Mankind”.

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Of these, the evolving role of the General Assembly, ECOSOC, UNCHR and its subsidiary bodies and mechanisms are discussed in greater details below.

GENERAL ASSEMBLY

The mandate of the General Assembly in human rights derives principally from Article 13 of the Charter which clearly specifies that the General Assembly can initiate studies and make recommendations etc. for "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religions".

Human rights issues are also referred to the General Assembly by its Committees, specifically the Third Committee (which deals with social, cultural and humanitarian issues), the Second Committee (which deals with economic issues), the Fourth Committee (which deals with decolonization) and the Sixth Committee (where the legal aspects are considered).

ECOSOC

The mandate of ECOSOC in the sphere of human rights, derives from Articles 62 and 64 which indicate that ECOSOC can make recommendations for the purpose of promoting, observance etc. of human rights and fundamental freedoms for all. It may prepare draft conventions for the international conferences on human rights. Article 64 further empowers ECOSOC to call for reports from specialized agencies on:

a) Steps taken to implement its recommendations.

b) Steps taken to implement the recommendations of the General Assembly.

It is under the powers flowing from this Article that the UN Commission of Human Rights reports to the ECOSOC.
Briefly, it may be mentioned that ECOSOC comprises 54 elected member states and normally meets in two sessions. ECOSOC has two functional commissions to assist it:


b) The Commission on the Status of Women

From time to time, ECOSOC has also established ad hoc committees comprising representatives of Government experts to deal with a range of issues, including human rights.

ECOSOC can also authorize the United Nations Secretary-General to appoint special rapporteurs or committees of experts to prepare reports on specific subjects including human rights.

ECOSOC also considers the report of the UN Commission on Human Rights. This report is usually adopted by consensus and comprises two parts: 1) a section which includes all the resolutions and recommendations of the UNCHR as well as the voting records, statements, etc. and 2) a section which covers the UNCHR’s draft decisions which require ECOSOC approval e.g. appointment of special Rapporteurs, the mandates 3) passage of draft conventions, etc.

UN COMMISSION ON HUMAN RIGHTS

The UN Commission on Human Rights (UNCHR), which was established by ECOSOC, in 1946 is the main UN body dealing specifically with human rights. It comprises 53 member states, elected for a three year term and meets annually for a six-week session. Members serve in their capacity as representatives of Government and only members or their alternatives have the right to vote in the proceedings. Non-members can be invited to participate in matters of specific concern to a member state.
Similarly, specialized agencies and other inter-governmental organizations may participate on issues of concern.

NGOs with consultative status can also be present as observers in the deliberations.

ROLE AND FUNCTIONS

Initially, the UNCHR (comprising only 18 members) had been involved with the drafting of the International Bill of Human Rights. Over the years, it has however, transformed itself from a standard setting body into one that can intrusively monitor human rights conditions and can pursue a wide range of measures to respond to human rights situations.

Its functions include studying and marking recommendations on human rights issues and recent initiatives include issues such as drafting of a Third Optional Protocol to the International Covenant on Civil and Political Rights on Right to Fair Trial. The UNCHR can also investigate allegations of human rights violations through a range of thematic and country specific mechanisms. Examples of such mechanisms include – Working Group on Situations, Working Group on Enforced or Involuntary Disappearances, the Group of Three to consider Periodic Reports under the International Convention on the Suppression and Punishment of Apartheid etc. The UNCHR can also establish and draw on mechanisms with normative functions and a recent example would include the Open-Ended Working Group which drafted the Declaration on the Rights of Persons Belonging to Minorities.\(^{24}\)

The UNCHR can meet in "special" session, if a majority of its members require, which it has done on the situations in Yugoslavia and Rwanda.
To further assist it in its work, the UNCHR has several subsidiary bodies, the most important of which is the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

**SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES**

The Sub-Commission was established in 1946 by ECOSOC with the mandate of (a) understanding studies on human rights issues, (b) making recommendations to the UNCHR on the prevention of discrimination of any kind relating to minorities, etc.

It comprises 18 members – (elected) who serve in their individual capacities.

It is important to stress that the Sub-Commission’s mandate is not limited to minorities alone.

The Sub-Commission has a range of mechanisms to assist it including Special Rapporteurs, Working Groups, etc.

It needs to be emphasized that the evolution of these mechanisms by the UN and the acquiescence of the international community represented a qualitative jump in respect of UN involvement in human rights, for it served to further judge human rights from the sphere of exclusive domestic and sovereign concern and accountability into the sphere of “legitimate” international scrutiny. This qualitative change was to be further underscored by the establishment of two mechanisms – the 1503 Communication Procedure and the 1235 Procedure which served to establish an element of “accountability” by States to the international community by providing in the former, for a procedure of individual complaints against a State to the UN, for which the State is answerable to the international community. Further, these two mechanisms were to pave
the way for a growing trend that "consistent patterns of gross and systematic violations of human rights" were in themselves sufficient to justify international scrutiny and condemnation.

1503 PROCEDURE

The 1503 procedure was established to deal with communications relating to violations of human rights and fundamental freedoms, indicating a consistent pattern of serious violations. This procedure can be invoked by any person, NGO group with "reliable knowledge of such violations".

Under this procedure which is, for the large part, confidential, complaints received from various sources, are referred to the State for response. The procedure involves detailed examination of Government responses in various stages including a Working Group on Communications, the UNCHR, ECOSOC, with the possibility of either a condemnatory resolution or a resolution calling for an intrusive mechanism e.g. a human rights monitor, onsite verification, etc., at the stages of the Sub-Commission, UNCHR, ECOSOC, etc. with the corresponding dilution of confidentiality.

1235 PROCEDURE

The other mechanism which has been increasingly activated is 1235 established by ECOSOC, in 1967, authorizing UNCHR and the Sub-Commission to place country situations on their public agenda. The UNCHR is further mandated to appoint Rapporteurs (either thematic or country specific) who present annual reports to UNCHR, ECOSOC. Examples include country rapporteurs on Myanmar, Iraq, Cuba etc. and thematic rapporteurs on Torture, Summary and Arbitrary Executions, Child Pornography etc.
Before going into detail about India’s role and contribution vis-à-vis the UN machinery on human rights, it is also important to outline the parallel human rights machinery that functions loosely under the “UN” umbrella, but which derives its mandate not from the Charter per se, but from International Covenants and constitute the so-called treaty bodies.

**TREATY BASED BODIES**

Primarily the seven major UN treaty based bodies are the following:

1. The Human Rights Committee (under the International Covenant on Civil and Political Rights).
6. The Committee against Torture (Convention against Torture).
7. Committee on the Apartheid Convention.

These treaty bodies and other Covenants, or Optional Protocols which are either under consideration or have been opened for signature (e.g. the International Convention on the Protection of the Rights of all Migrant Workers), outline different categories of rights to which States agree to adhere, and in becoming party to these Covenants, further agree to a measure of international accountability. All the treaty bodies listed
above provide for a system of regular reporting. By and large these treaty bodies comprise experts, elected in their individual capacity who subject periodic reports submitted by States to critical scrutiny and whose criticisms and recommendations cannot be ignored by States.

EMERGING TRENDS IN HUMAN RIGHTS

The change in the depth of focus on Human Rights can be judged from the Vienna Declaration. While the International Bill of Human Rights and the Proclamation are 5-6 page documents, the Vienna Declaration has over 30 pages. It is moreover not just a Declaration or enunciation of principles but asserts that it is also a programme of Action. It asserts that protection and promotion of human rights is the first responsibility of Government; it calls for a concerted effort to get all States to sign international human rights instruments; it calls for increased co-ordination in support of human rights within the UN system; it demands more resources for human rights and the creation of a post of UN High Commissioner for Human Rights; and increased and more intrusive monitoring. We must recognize that the Vienna Declaration constitutes a quantum leap in giving Human Rights a much higher profile than it enjoyed before and setting in place resources and mechanisms which could make for a far higher degree of instructiveness than evidenced hitherto. This is not to say that the West had a field day in Vienna. Developing countries were able to dilute the degree of instructiveness sought to be built into the document, get recognition for national and regional particularities, obtain a meaningful treatment on the right to development, including extortion that the international community promote effective international co-operation for this purpose.

From India's point of view and immediate self-interest, we were able to keep out any reference to Kashmir even by implication. This was a major exercise as throughout the year long preparatory process, Pakistan made
strenuous efforts to insert language with direct reference to Kashmir. Apart from this, we for the first time, were able to get a recognition that terrorism constituted a violation and obstacle to the achievement of human rights and the international community was called upon to take the necessary steps to enhance co-operation to prevent and combat terrorism. This was a major achievement because hitherto the international community and particularly human rights experts have been loath to admit that terrorism and terrorists are responsible for human rights violations. They have preferred to put the blame on Governments. It is also significant as for the first time, terrorism has been separated from any qualifier distinguishing it from struggles for self determination.

In regard to self-determination the treatment India secured was satisfactory. While there was an unambiguous recognition that all peoples have the right of self-determination, this was balanced by the assertion that this shall not be construed as authorizing or encouraging any action which would dismember or impair the territorial integrity or political unity of sovereign or independent States.

Other recent trends include: (a) the raising of human rights issues in a selective manner by certain countries to achieve a range of objectives from territorial aggrandizement to a search for a political quid pro quo, to justification for international assistance or even to further economic concerns by promoting linkages and conditionalities between human rights, labour standards etc. and trade.

(b) a shift in emphasis from normative enunciation of principles and ideals to implementations and monitoring through enhanced activation of the UN “Human Rights Machinery”. This includes both the “flood” of complaints received under the 1503 Procedure as also the pillaring of developing countries through country specific resolutions.
(c) a palpable trend towards, not merely legitimations of a degree of international scrutiny and accountability of States to international for a, for their domestic human rights record, but an effort to put in place intrusive mechanisms from onsite visits to the acceptance of human rights monitors, thereby seeking not merely to scrutinise, but also to verify at first hand the State's record.

(d) there has also been a trend towards proliferation of new and additional mechanisms. e.g. creation of a UN High Commissioner for Human Rights, paralleled by a blurring of the distinctive mandate of the Charter based Human Rights, as also a surfacing of a linkage between concerns for human rights per se and the perception of human rights as a possible "root cause" or pre-condition for the maintenance of peace and security. This latter trend is reflected, for example, in the expansive interpretation of the mandate of the UN High Commissioner for Refugees, as also in the effort to push for a greater role for the Security Council.

Under the UN Charter, a specific role for the Security Council on human rights issues has not been strictly envisaged. By virtue of Article 24 of the Charter, the Security Council has primary responsibility for the maintenance of international peace and security. This includes peaceful settlement of disputes and responses to acts threatening international peace and security.

However, there is an increasing attempt to link the issue of human rights with the maintenance of peace and security and to push for a greater role for the Security Council in "promoting peace and security", including promotion of human rights, which is beginning to be seen as causative or "root cause" for threats to peace and security. Examples include the situations in Somalia, Rwanda and even to some extent Bosnia, which are being used to suggest that "systematic violations of human rights" do constitute a threat to international peace and security.
INDIA'S ROLE

India's role, contribution and interaction with the UN machinery on human rights, derives from a clear domestic commitment to promotion and protection of human rights which is both enshrined in the Constitution and legislation of the land and is further safeguarded by a vibrant democracy, zealously independent judiciary and press and a range of other mechanisms, a well informed public opinion and active NGO movement. Moreover, as a secular functioning democracy, committed to the upholding of human rights, India has been sensitive and responsive to any sporadic and individual aberrations leading to human rights violations both in terms of regular systemic review leading to strengthening of existing safeguards and establishment of new mechanisms / institutions where required e.g. the recent establishing of a vigilant National Human Rights Commission\(^{26}\).

This unswerving commitment, at the domestic level, to human rights, has to a large extent moulded India's role vis a vis the UN machinery on human rights. On the one hand, it has played an active role in the forging of a consensus on a range of human rights issues, seeking to forge an acceptable balance between the growing concern of the international community with human rights and the compulsions generated by the national sovereignty and the right of States to conduct their internal affairs, including protection and promotion of the rights of their citizens without external interference. India has also played an active role in normative terms, in strengthening existing norms and evolving new standards on a range of issues from the rights of women, the protection of children from exploitation to international humanitarian law in various for a both within the UN and in important International Conferences – the Vienna Conference, the Preparatory Meetings for the Beijing Conference, the ICPD, the World Social Summit, the Non-Aligned Movement etc.
India has also sought to promote a holistic approach to human rights urging that human rights are indivisible, interrelated, interdependent and that no set of rights have undue primacy over other rights. India has also been successful in focusing the attention of the international community on the phenomenon of terrorism as an important violation of human rights for which terrorist groups as also their sponsors should be held accountable. In this effort, India has achieved a considerable measure of success for, at the sessions of the UNCHR, the General Assembly etc., Resolutions have been adopted which articulate the international community's unequivocal condemnation of terrorism as a violation of human rights and recognition of terrorism as a threat to the territorial integrity and security of states which is aimed at destabilization of the legitimately constituted Governments and seeks to undermine pluralistic civil societies.

At the same time, against the backdrop of increasing politicization of human rights, India is playing an important role in seeking to delink conditionalities and linkages between human rights, labour standards etc. and trade and in preventing the selective "misuse" of "human rights" to achieve extraneous objectives by articulating its own determination to support only those resolutions on human rights, where there is a clear international consensus that serious violations occur.

India's role vis-à-vis the treaty based bodies has also been characterized by constructive co-operation. India has given expression to her commitment to promote and protect human rights by becoming a party to more than 16 major international human rights instruments, including the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention on the Elimination of Discrimination against Women, etc. This commitment has been further underscored by our regular fulfillment of reporting obligations under the various covenants. Further, the policy of transparency and responsiveness to human rights issues is
reflected in our co-operation with all UN mechanisms on human rights issues and our continuing dialogue with NGOs, both domestic and international, on a range of human rights issues.

It must however, also be acknowledged that India has been on the receiving end of attention on human rights issues, largely due to the stratagems of Pakistan, in repeatedly seeking to focus the attention of the international community on allegations of gross violations of human rights, particularly in Jammu and Kashmir. While this has been the favoured route for internationalization of the Kashmir issue, Pakistan has also attempted to raise the Kashmir issue on the grounds of a threat to peace and security of the region, a potentially more explosive route with all the attendant implications of preparing the ground for possible Security Council "cognizance" of the issue[27].

However, all in all, India's record in the sphere of human rights is acknowledged to be far ahead of many other developing countries with inbuilt safeguards for the promotion and protection of human rights, which are not only enshrined in the Constitution and legislation of the land, but are further safeguarded by a vibrant democracy, independent judiciary and press, a vigilant National Human Rights Commission, an informed public opinion and active NGO movement. India's articulation of her commitment to the promotion and projection of human rights by becoming a party to more than 16 major international human rights instruments is also widely appreciated. This commitment to human rights is further reinforced by a policy of transparency, responsiveness and dialogue, not only with the UN machinery on human rights, but also international and domestic NGOs as also domestic public opinion.
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