CHAPTER - III

THE ROLE OF UNITED NATIONS IN THE PROTECTION AND PROMOTION OF HUMAN RIGHTS

It was with the birth of the United Nations that the Human Rights movement gained a momentum in the International sphere. The first documentary use of the expression ‘Human Rights” was found in the Charter of United Nations which was adopted at San Francisco on June 25, 1945 and ratified by majority of signatories in October that year. Prior to the formation of the United Nations, human rights were considered exclusive rights for the state. This concept has changed with the formation of the United Nations and the human rights have got universal recognition.

The United Nations came into existence on 24th October 1945, It is clear that the main object of the United Nations is that to make the concept of human rights, a universal one and to promote and protect the same. From the time of establishment of United Nations, there has been a tremendous surge in the development of international Law. The general Human Rights concept embodied in the United Nations Charter were elaborated in 1948- (Universal Declaration of Human Rights) and had a very wide impact influencing the formulation of many new national Constitutions and Municipal laws. At international level, from the beginning of the establishment of International Bill of Rights to the point where the UN
system has developed, the standards of Human Rights is in a diversified range of areas and can be regarded as providing the global Human Rights regime.


Preamble of the UN Charter, which was drawn up to prevent the recurrence of the destruction and suffering caused by the Second World War, was done by setting the International organisation called the UN, which declared that the it shall have for its object, 'Inter alia', "to reaffirm faith in the Fundamental Human Rights". And Article, thereafter carried the message, that the purposes of the UN shall be among others “To achieve international cooperation in promoting and encouraging respect for Human Rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". The other concepts of Human Rights embodied in the UN Charter are given in APPENDIX-A of this research work.

At the San Francisco conference in 1945, A proposal was put forward to embody an International Bill of Rights in the UN Charter. The executive committee and the preparatory commission of UN recommended for the

1 Article 2 of the charter of UN
2 Doc1209,p:19.1UNC10 DOC'S 683(1945)
formulation of an International Bill of Rights. The General Assembly of UN agreed it in January 1946. In 1947, the Commission of Human Rights was set up under the guise of Economic and Social Council (ECOSOC) in February 16, 1946 decided that the Bill should consist of the declaration, Convention(covenant) and the measures of implementation. This decision was again approved by the General Assembly in 1948.

In 1952, it was decided by the UN that there shall be two great Covenants; One on Civil and Political Rights and the other on Economic, Social and Cultural rights. These two Covenants were adopted unanimously on 16th DECEMBER 1996 but they were entered into force only in 1976. The Covenants are to affirm legal obligation of states to respect Human Rights.

The Universal declaration of Human Rights 1948, ICCPR(1966) and ICESER(1966) constitute a trinity 'often referred to as 'The Magna Carta of Humanity'. The UN had played a commendable role to achieve its goal in protection and promotion of Human Rights. It had not only declared the above Covenants and Declarations but also made the mechanisms to implement the concepts of Human Rights by establishing UN High Commissioner for Human Rights, Commission on Human Rights, Human Rights Committee and various other Committees. These are discussed elaborately hereunder.

Since the inception of United Nations, it adopted various conventions and resolutions in respect to human rights and other subjects, These are given in the APPENDIX - B.
The declaration on human rights was adopted by the General Assembly on December 10, 1948 and it had the tremendous impact over the constitutions of various countries including India and India is a signatory of the Universal Declaration Of Human rights 1948.\textsuperscript{3}

The UDHR is the foundation upon which the modern conception of Human Rights has been built. The declaration has been the guiding principle for all the States in the organisations and societies. The declaration proclaims the principles as a common standard of achievements for all the people and all the Nations. The aim of the declaration is to achieve a world in which human beings shall enjoy the freedom of speech, belief, freedom from fear and want\textsuperscript{4}. The achievement of these four freedoms has been proclaimed as the highest aspiration of the common people. The preamble of the declaration reflects the legacy of socialist as well as liberal thought, every individual and every organ of the society should strive to promote and respect these rights. The declaration consists of 30 Articles. The Preamble and the selected articles of the declarations were given in APPENDIX-C of this research work.

\textsuperscript{1} Adopted and Proclaimed by The General Assembly Resolution 217 A(III) of 10 December 1948.

The earlier concept of the human rights was to promote and protect the value of human rights. However, the Universal Declaration of Human rights had taken steps to give the effective remedy to the aggrieved person or the victim. The Universal Declaration of Human rights makes it clear that the starting point in Human Rights violations is the intention of Arbitrary arrest and Detention and it has to be prohibited.

Since 1948 the UDHR has been and rightly continues to be the most important and far reaching of all UN declarations and a fundamental source of inspiration for national and international efforts to promote and protect the human rights and fundamental freedoms. It has set the direction for all subsequent works in the field of Human Rights and it has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms which it proclaims.

In the recent years, there has been the growing tendency for UN organs, in preparing international instruments in the field of Human Rights, to refer to the principles of the UDHR. Some of them are:

i. Declaration on the protection of Women and Children in Emergency and Armed Conflict, Proclaimed in 1974.

5 Article 8 of the UDHR.
6 Ibid Article 9.

iii. **Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on the Religion of Belief**, Proclaimed in 1981.

From 1948, until 1976, when the International Covenants on the Human Rights entered into force, the UDHR was the only completed portion of the International Bill of Rights. The declaration exercised a profound influence upon the thoughts and actions of individuals and their Governments in all parts of the World.

The UDHR came to be recognised as a historic document articulating a common definition of the human dignity and values. The declaration was a yardstick, to measure the degree of respect for and compliance with International Human Rights standards everywhere on earth. Moreover, UDHR is truly universal in scope, as it preserves its validity for every member of human family, everywhere, regardless of whether or not Governments have formally accepted its principles or ratified the Covenants. Its far reaching achievement are exemplary as its rights were adopted outside the UN system. For example, the preamble of the Convention of the Protection of Human Right and Fundamental Freedoms, adopted by the Consultative Assembly of Europe in Rome in 1950, carried the principles and rights of UDHR.
Another implication of the UDHR was that the Judges of the International Court of Justice have invoked the principles contained in the UDHR as the basis for their opinions. The impact of the Universal Declaration Of Human rights 1948 is very much on our Indian Constitution. The principles of human rights are directly enshrined in Part III and Part IV of our Constitution as fundamental rights and Directive Principles of State policy respectively. Some of the important Articles are enumerated below. The Indian judiciary, the Supreme Court in particular, had applied the principles of the UDHR in the cases filed before them. And all these aspects were dealt exhaustively in Chapter-V of this research work.

| Article 14-18 | Right to Equality |
| Article 19 | Right to freedom such as expression, assemble, association, movement and residence. |
| Article 20 | Protection to Accused persons, |
| 1. | Prohibition of ex-post facto criminal laws. |
| 2. | Protection of double Jeopardy. |
| 3. | Prohibition against self-incrimination. |
| Article 21 | Protection of life and personal liberty. |
| Article 22 | Protection against arbitrary arrest and detentions. |
| Article 23 & 24 | Right against exploitations. |
| Article 32&226 | Right to constitutional remedies by approaching courts. |
In the recent years, national Constitutional and Legislative texts have increasingly provided the measures of legal protection for the principles of UDHR, ICCPR and ICESCR; indeed many recent national and local laws are clearly modeled on provisions set forth in the UDHR and the Two Covenants, which remain the beacon lights of the present and future efforts in the field of Human Rights, both nationally and Internationally\(^7\).

**TWO COVENANTS ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS:**

The rights provided in the Universal Declaration Of Human rights of 1948, have been set forth in two covenants viz. (A) THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS and (B) INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS.

(A) **THE COVENANT ON CIVIL AND POLITICAL RIGHTS – 1966 (ICCPR)**

It was adopted by the United Nations on 16-12-1966 and came into force on 23 March 1976\(^8\), India which is a signatory of the UNIVERSAL DECLARATION OF HUMAN RIGHTS, adopted this covenant on 27\(^{th}\) March

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\(^7\) Gokulesh Sharma, *Human Rights and Legal Remedies*, 2000, D&D Pub, p175.

\(^8\) Adopted and Opened for signature, ratification and accession by General Assembly resolution 2200A (xxi) of December 1966.
1979 and this covenant contains 6 parts and covers 53 Articles of civil and political rights;

There were two optional protocols to these covenants they are (I) Optional Protocol to the Covenant On Civil And Political Rights and (II) Second optional Protocol to the Covenant On Civil And Political Rights, both enumerates the conditions for the member states to abide with it so that, the effective mechanism of the covenant can come into play its role in protection of Human Rights.

The ICCPR is founded on the same premise, which is also the basis for the UDHR: recognising the inherent dignity and the equal and inalienable rights of human person. In order to achieve the ideal free human being as conceived by the UDHR, it was necessary to create conditions whereby everyone can enjoy the Civil, Political, economic, social and cultural rights. This covenant deals with the Civil and Political rights in detail. In fact, the covenant is an extension of the rights, dealt within the UDHR.

The preamble of the covenant recalls the obligation of states under the United Nations Charter to promote the human rights, reminds the individuals of their responsibility to strive for the promotion and observance of those rights and recognises that in accordance with the UDHR, the idea of free human beings enjoying civil and political freedom and freedom from fear

9 Ibid, entry into force on 23 March, 1976
10 Adopted and proclaimed by the General Assembly resolution 44 128 on 15 December 1989.
and want can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights.

It reaffirms the equal rights of men and women to the enjoyment of all human rights and enjoins the states to make that principle a reality\textsuperscript{11}. It provides the safeguard against the destruction or undue limitation of any human right of fundamental freedom and against the misrepresentation of any provision of the covenant as a restriction to a greater extent than provided in the covenant\textsuperscript{12}.

It provides protection of the Right to life\textsuperscript{13} and lays down that no one is subjected to torture or cruel, inhuman or degrading treatment or punishment\textsuperscript{14}, no one is held in Slavery\textsuperscript{15}, no one is subjected to arbitrary arrest or detention\textsuperscript{16}, that all persons deprived of their liberty shall be treated with humanity\textsuperscript{17}.

It further provides for freedom of movement\textsuperscript{18} and it emphasises the concept of Equality before law\textsuperscript{19}. It prohibits the retrospective criminal legislation\textsuperscript{20}, lays down the right of every one to be recognised everywhere as

\begin{footnotesize}
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\item \textsuperscript{11} Article 3 of ICCPR
\item \textsuperscript{12} Ibid Article 5
\item \textsuperscript{13} Ibid Article 6
\item \textsuperscript{14} Ibid Article 7
\item \textsuperscript{15} Ibid Article 8
\item \textsuperscript{16} Ibid Article 9
\item \textsuperscript{17} Ibid Article 10
\item \textsuperscript{18} Ibid Article 12
\item \textsuperscript{19} Ibid Article 14
\item \textsuperscript{20} Ibid Article 15
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a person before the law\textsuperscript{21} and calls for the prohibition of arbitrary or unlawful attacks on the Right to Privacy\textsuperscript{22} of the individual.

Part IV of the covenant provides the establishment of the Human Rights Committee, which is responsible for the supervising the implementation of the rights, set out in the covenant\textsuperscript{23}.

The covenant on civil and political rights makes the member states to implement the provisions of the covenant upon the ratification of the covenant by the states concerned.

(B) COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)- (ICESCR)

This covenant was adopted by the General Assembly on 16-12-1966 and came into force from 3 January 1976. India adopted the same on March 27th 1979. It contains 5 parts covering 31 Articles.

Like the preceding covenant on the Civil and Political Rights, this covenant also recognises in the preamble the necessity of creating sufficient conditions whereby everyone may enjoy their economic, social and cultural rights. It also recognises that these rights are derived from the inherent dignity of human beings.

\textsuperscript{21} Ibid Article 16
\textsuperscript{22} Ibid Article 17
\textsuperscript{23} Ibid Article 28
Article 1, 3 and 5 of the covenant is identical to the rights set forth in the covenant on Civil and Political rights and the difference here is that those rights were given to every individual in the sphere of Economic, Social and cultural.

It states that the rights in this covenant may be limited by law, but only as an when it is compatible with the nature of the rights and solely to promote the general welfare in the democratic society.

It recognises the concept right to work and to form and join trade unions. To provide an adequate standard of living and right to education and Right to form social security.

In the measures for implementation of protecting and promoting Human Rights, the Covenant provides a system of periodic reports by state parties. The state parties undertake to submit reports to the ECOSOC on the measures adopted and the progress made in this field. The ECOSOC in turn sends the report to the Commission on Human Rights for perusal and recommendations. The ECOSOC may submit the reports and the measures taken, to the UN General Assembly.

24 Article 4 of ICESCR
25 Ibid Article 6
26 Ibid Article 7
27 Ibid Article 10
28 Ibid Article 13 & 14
29 Ibid Article 9
30 Ibid Article 16-25
31 Ibid Article 21
IMPACT OF THE COVENANTS

The importance of the covenants were considered in the drafting of the international instruments by the United Nations organs in the field of human rights.

The international conference on Human rights which met at Tehran from April 22 to 13 of May, 1968 to review the progress made in the twenty years upon the adoption of UDHR, emphasised the obligation of the members of the International community to promote and encourage the respect of Human Rights and fundamental freedoms for all and the conference went on to affirm its faith in the principles set out in the covenants and urge all the people and Governments to dedicate themselves to those principles and their efforts to provide for all human beings a life consonant with freedom and dignity.

The covenants along with the UDHR had exercised a significant influence upon a number of bilateral and multilateral treaties and they had a strong impact as the basis for the preparation of many new National Constitutions and National laws. By the entry of the covenants, the state parties accepted a legal as well as moral obligation towards the promotion and protection of human rights and fundamental freedoms.

Many important resolutions and decisions adopted by the UN bodies including General Assembly and Security Council, UDHR and both the
covenants have been cited as the basis for action. The Judges of the International Court of Justice have occasionally invoked the principles of the UDHR and the covenants as the basis for their opinions.

MEASURES OF IMPLEMENTATION

Rights are meaningless and futile unless they are implemented. The two covenants have some measures for implementing the Rights. The main differences between the two covenants is that while under the economic, social and cultural covenant, the instrumentality of implementation, is “The Economic And Social Council” assisted by the “Commission on Human Rights” and other specialised agencies but, under the civil and political covenant, this function is performed by the Human Rights Committee. These two machineries were discussed hereunder.

COMMISSION ON HUMAN RIGHTS

The Commission on Human Rights is the most important of UN Human Rights body. It is one of the six ‘Functional Commissions” established by the ECOSOC in 1946, which reports to the General Assembly through ECOSOC. The Commission has a very broad mandate to discuss any matters relating to the Human Rights. It is an Inter Governmental body, composed of 53 states elected for three years terms on the basis of regional representation (there are regional groupings in the UN consisting of Asia, Africa, Latin

12 Article 68 of UN Charter.
America, Eastern & Western Europe and others including Australia, Canada, Newzealand and USA) Because of the Commissions importance, a great many other UN member states participate in its work as observers, although they cannot vote.

With its members the commission makes studies and recommendations either on its own or at the request of the General Assembly of the UN or ECOSOC. The Commission on Human Rights has the right to make recommendations to the ECOSOC regarding Sub-Commissions, that is to be needed. In this regard, the Commission has the right to utilise the service experts in specialised fields or individual experts. The commission normally meets for one six-weeks session each year in Geneva in February-March. The Commission on Human Rights had its first session on February 1947 and the second in December 1947. Special Sessions can be held with the agreement of a majority of the members. For example, special sessions were held regarding the situations in former Yugoslavia (1992) and the situation in Rwanda (1994).

The commission was originally charged with the task of drafting of 'International Bill on Human Rights" which it had done. In addition, a numerous working groups and committees over the years have drafted standards on a wide range of issues.

Since the Commission generally meets only once in each year, it conducts much of its works through its so called 'Mechanisms', which focus on
particular feature or on a specific country. A Mechanisms usually called a ‘special rapporteur’ or a ‘working group’, Carrieys out certain mandate from the commission. The mechanism that deals with certain issues were;

1. Special rapporteur on Torture

2. Working group on Arbitrary detention

3. Special rapporteur on violation against women

There are also “Country specific mechanism”. Each mechanism has its own mandate, which is contained in the commission’s resolution creating it. Generally speaking, they examine information and allegations received on a particular subject or a country and transmitsufficiently the documental information and cases to the Government concerned for comment.

In appropriate cases, the Government is urged to investigate the matter. Some of the Mechanism have established a procedure for making urgent appeals to the concerned Government, For example, when a reliable information is received on cases of disappearance or torture. With the consent of the concerned government, they can visit a country to observe the situation on first hand. They issue Annual report to the country and in some cases, information report to the General Assembly, which gives a summary of the actions that have taken over the past year and the information they have received and often include recommendations for improving the situations
described. These reports are an extremely useful sources of authoritative information on Human Rights violation in many countries.

The Commission in its area of powers have submitted certain conventions which were considered to be very important in the International sphere, those were:

7. Declaration on the Protection of All Persons from being Subjected to Torture And Other Cruel, Inhuman or Degrading Treatment or Punishments, 1975, and

HUMAN RIGHTS COMMITTEE

The HRC was established under part IV of the ICCPR enumerating its Constitution, powers, of 18 independent and expert members elected by the states parties to the covenant for functions. It consists four year terms, with consideration given to the need for equitable geographical distribution and representations of the different forms of the civilisations and of the principal legal systems.34

The HRC meets three times a year (Geneva and New York) and operates by the way of consensus35. The covenant is primarily implemented by the means of a reporting system, whereby the State parties provide information on the measures adopted to give effect to the rights recognised in the covenant. Initial reports are made within one year of the entry into force of the covenant for the state in question and general guidelines issued36. The HRC has decided that subsequent reports would be required every five years. The reports are discussed by the HRC with representatives of the states concerned (following upon the precedent established by the Committee on elimination of the Racial Discrimination)37. The practice that is used to be is that the Committee members would informally receive information from the sources other than the reporting State provided the source is not publicly identified. This enabled the HRC to be more effective than would otherwise have been the case. The HRC may also seek additional information from the

34 Article 28-32 of the ICCPR
35 3 HRLJ 1982, p 209 and 1984, p 202
36 Article 40 of ICCPR and CCPR/C/5
37 Buergenthal "implementing" pp 199-201
State concerned. For example, in October 1992, the HRC adopted a decision requesting the governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), Croatia and Bosnia–Herzegovina to submit a short report concerning measures to prevent inter alia ethnic cleansing and arbitrary killings. Such reports were forthcoming and were discussed with the states' representatives concerned and comment adopted. The HRC thereafter adopted an amendment to its rules of procedure permitting it to call for reports at any time deemed appropriate. The committee has also noted that the people within the territory of a former state, party to the Covenant remain entitled to the guarantees of the Covenant.

Under Article 40 (4) of ICCPR, the HRC is empowered to make such general comments as it may deem appropriate. In 1992, the specific comments would be adopted referring to the country in question and such comments would express both the satisfaction and the concern of the committee as appropriate. These specific comments are in a common format and refer to 'Positive aspects' of the report and 'principle subjects for concern' as well as 'suggestions and recommendations'. The HRC has also adopted a variety of General Comments. These comments were generally non-controversial. One interesting comment on Article 6 (Right to Life), however, emphasised the committee's view that 'the designing, testing, manufacture, possession and development of nuclear weapons are among the greatest threats to the right to life', and that the 'production, testing, possession and

38 CCPR/C/SR/1178/Add.1
39 NQHR, 1995, p.5
40 17,HRQ,1995, p.766
41 T.Opshal, the General Comments of the Human Rights Committee, 1989, p 273.
deployment and use of nuclear weapons should be prohibited and recognised as crimes against humanity\textsuperscript{42}.

In April 1989, the HRC adopted a general comment on the rights of the Child, as the process of adopting the convention on the rights of the child neared its climax. Special attention has to be paid to the rights of every child to acquire a Nationality.

In November, 1989, an important general comment was adopted on non discrimination\textsuperscript{43}. The death sentence could not, under Article 6(5) of ICCPR , be imposed on persons under the age of 18 or upon pregnant women. Another general comments on minorities and reservations are adopted in 1994.

Under Article 41 of the ICCPR the State parties may recognise the competence of the committee to hear interstate complaints. Both the complainant and object states must have made such declarations. The committee will seek to resolve the issue and ,if it is not successful ,it may under Article 42 appoint, with the consent of the parties ,an ad hoc conciliation commission\textsuperscript{44}.

The powers of the Human Rights committee were extended by the Optional Protocol to the Civil And Political Rights Covenant with regard to ratifying states to include the competence to receive and consider individual

\textsuperscript{42} 35 ILM,1996,pp 809
\textsuperscript{43} CCPR/C/21/Rev.1/Add.1,p3
\textsuperscript{44} As of 31 Dec 1995 ,41 states had made such declarations,also see ST/HR/4 Rev.13,1996
communications, alleging violations of the covenant by a state party to the Protocol.\textsuperscript{45}

By September 1994, 587 communications concerning 44 states parties had been placed before the committee, of which 193 had been concluded by final views having been issued and 201 declared inadmissible.\textsuperscript{46}

HRC has done a commendable work in deciding some of the crucial aspects of the Human Rights in the following cases:

1. In Lovelace case\textsuperscript{47} the committee found Canada in the breach of art 27 of the ICCPR protecting the rights of minorities, since its law provided that an Indian woman, whose marriage to a non-Indian had broken down, was not permitted to return to her home on Indian reservations.

2. In Mauritian Women case\textsuperscript{48} a breach of Covenant rights was upheld where the foreign husbands of Mauritian women were liable to be deported. Whereas the foreign wives of the Mauritian men would not have been. The HRC has also held that the covenant’s obligations cover the decisions of diplomatic authorities of state parties regarding citizens above.\textsuperscript{49}

\textsuperscript{45} 28, German Year Book of International Law, 1985, p. 9
\textsuperscript{46} A/49/40, Vol I, p 63
\textsuperscript{47} 1981, Report of HRC, A/36/40, p.166
\textsuperscript{48} ibid, p 134
\textsuperscript{49} Waksman case, 1HRLJ,1980,p 220.
3. In Robinsons case\textsuperscript{50}, the HRC considered whether a state was under an Obligation itself to make a provision for effective representation by counsel in a case concerning a capital offence, in circumstances where the counsel appointed by the author of the communication declines to appear. The committee emphasized that it was axiomatic that legal assistance be available in capital cases and decided that the absence of counsel constituted unfair trial.

4. In Vuolanne case\textsuperscript{51} the issue faced by the HRC was, regarding the procedural safeguards in the art 9(4) of the ICCPR, where by a person deprived of his liberty is to be allowed resource to the courts, applied to the military disciplinary detention.

By the reasons mentioned above, it is apparent that the committee has proved a success and is playing an important role in the protection and promotion in the field of Human Rights.

The other important committees under the guise of UN are:

1. The Committee on the Elimination of discrimination against women, was established in 1946 as one of the functional commissions of ECOSOC.

\textsuperscript{50} A/44/40, p241(1989)

\textsuperscript{51} A/49/40, Vol II, p249.
2. The Committee against Torture and other Cruel and Inhuman or Degrading Treatment or punishment was adopted by the General Assembly in 1975.

3. The Committee on the Rights of the Child were adopted by the General Assembly on 20 Nov 1989.

It is submitted that the United Nations had done a commendable work in the field of human rights. It has set out the international standards for the protection and promotion of human rights concept. Still, there are some violations and denials of basic human rights in many part of the world. The main problem of United Nations in facing this challenge is that, it lacks the independent enforcement. The sovereignty concept is also considered the main obstacle to the United Nations in this regard.

Another demerit aspect of the International Court of Justice an institution under UN situated at Hague is that, it cannot SUO MOTU take action in protecting human rights. However, an individual can approach the doors of International Court of Justice in case of violation of human rights.

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52 See Article 92,93 Of United Nations Charter