CHAPTER 3

HUMAN RIGHTS IN INTERNATIONAL PERSPECTIVE
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The expression human right is relatively new having come into everyday parlance only since World War-II and the founding of United Nation in 1945. However, the idea of human right is as old as the history of human civilization. These 'rights of man' had place in almost all the ancient civilization of the world. In the Babylonian laws the seeds of international law may be traced in the reign of Lagas Ursula of Lagash (3260 B.C.); Sargon of Akkad, (2300 B.C) and Hammurabi of Babylon (2134 to 2088 B.C). The Assyrian laws in the reigns of Tighalat Pilasar (1115-10772 B.C.) and Hiite laws in the reign of King Telpenus provided for the protection of the rights of man and in Europe human rights mainly emerged under the umbrella of philosophical, political and legal values that came into existence from Renaissance onwards.

I. Human Rights in Greco Roman Period

The development of the natural rights of man was mainly contributed by the Stoic Philosopher. They first developed natural law theory and by virtue of it, they explained the nature of human rights as rights which every human being possesses because of

3 ibid
being human.⁵ According to Socrates, man possesses 'insight' and this insight reveals to him the goodness and badness of things and makes him know to absolute. This human insight is the basis to judge the law. According to Greek Philosophy, the laws of nature are unwritten. The human beings are born with human rights which are inalienable. According to Stoic Philosophy, the principle of natural law was universal in their nature. For example, Antigone who upon reproached by Creon for defying his command not to bury her slain brother, asserted that she acted in accordance with the immutable laws of God.⁶ The idea of justice at an early stage in Greek Philosophy was a building principle not only for the behaviors of the individuals but also for the organization of society. According to Aristotle, like shall be treated as alike and unlike as unlike.⁷ During 500 B.C. to 483 A.D. various change were made. During this period women were also given certain rights.⁸ According to Roman Jurists natural law was that which nature not the state assures to all human beings. They believed in universal brotherhood of man.⁹

II. Human Rights During Middle Age

Middle age was a period of European history between the classical age and Renaissance. One of the first attempts at

⁵ Supra note 1 p. 2.
⁶ ibid
⁸ ibid
codification of some things like a catalogue of rights can be seen in 1188 A.D. During this period for the idea of human rights to take hold as general social need and reality, it was necessary that basic changes in the belief and practice of society take place change of the short that evolved from about the 13th century to the peace of Westphalia during the Renaissance and decline of feudalism.10 Teaching of St. Aquinas (1224-1274) and Huge Grotius (1583 to 1645) on European Continent and the English Bill of Rights (1689) in England were proof of this change.11

(a) The Magna Carta (1215 A.D)

During the Middle age rich landowners and barons forced King John to sign on Magna Carta. Thereafter, it became mandatory for the king to rule in fair manner and protect the barons from unfair treatment from the government. Today Magnacarta is also known as ‘Great Charter of Liberty’ and is considered landmark in the history of human rights and free government.12

(b) The Petition of Rights (1628)

The Petition of Rights is a document which sets forth grievances against King Charles – I. It is a Parliamentary Declaration in which freedom of people was dealt with Article 1 of it declared that loans taxes without consent of Parliament were illegal. Article 2 provided that all arbitrary imprisonment without cause shown was illegal.13

10 Supra note 2 p .37.
11 ibid, p .38
12 Supra note 9 p .5.
(c) The Habeas Corpus Act, 1679

The Habeas Corpus Act of 1679 was the west critical statute regulating the use of great writ in Britain. The following two aspects of this Act are of consideration.

(1) The writ would be available to anyone in official custody unless the custody was the result of a valid warrant of commitment or of a valid conviction of a crime. It is important to note that validity of either a warrant or a judgment of conviction was subject to very limited inquiry, that is, whether the body issuing the warrant or rendering the judgment lacked jurisdiction.14

(2) Where there was a valid order of commitment on a criminal charge the Court could direct the release of prisoner on the bail unless the accused was indicated and tried within specified time.15

(d) Bill of Rights, 1689

The Bill of Rights Act, passed in 1689 completed the remaining work of Magnacarta. By this right William and Marry were declared to be King and Queen. It was also provided that the person who was Roman Catholic or married with Roman Catholic could succeed to the throne. The power of crown to suspend the law declared illegal. The standing army was also declared illegal. The Bill of Rights limited the power of king and safeguarded the certain rights of subjects.16

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15 ibid
III. Modern Concept

(a) Natural Law Containing Human Rights:

The natural law was considered as overriding law expressing higher justice than man made laws. According to the Grotius, natural law is so immutable that it cannot be disobeyed even by God. H.L.A. Hart pointed out that there are certain rules which are necessary if human beings are to live together. Justice Holmes stated that it is purely inductive statement of certain minimum conditions we cannot do without it if life is to be descent.\(^{17}\) During Glorious Revolution in 1688 John Lock broadly discussed that certain rights are apparently available to a person as human being only, because they existed in the state of nature before humankind entered in civil society and the main right of those were the rights to life, liberty and property.\(^{18}\)

(b) The Social Contract Theory:

In the 16\(^{th}\) and 17\(^{th}\) Century Social Contract Theory came into existence. This theory became popular through the writings of Thomas Hoses (1558-1679) John Lock (1632-1704) and Jean Jacques Rousseau (1719-1778). They took the help of the notion of social contract to explain the relationship between individual and society.\(^{19}\) Rousseau undertook to explain that the state of nature emerged at political society due to separate act of individuals,


\(^{19}\) Supra note 1 p 4.
whereby they undertook with another to set up a government which would be responsible for promotion of their common interest. The concept of social contract was closely linked with the ideas of natural law from which it derived its authority and sanction. Thus the notion of individuals rights and justice were believed to pre exist logically the society in which they were operative.\footnote{20}

(c) \textbf{The American Revolution (1775-1783):}

The American Revolution was an age of constructive ideas and progressive expectations. The American Revolution was a conflict between Britain and 13 of its colonies.\footnote{21} In 18\textsuperscript{th} Century the British Government introduced certain needs. It was opposed by American people. They argued that since they had no representative in British Parliament, it had no right to impose upon them.\footnote{22} It is also called ‘American War of Independence’. This Charter of American Revolution was based on thoughts of Hobbes, Lock, and Rousseau. According to Thomas Jefferson, “We hold these truths to be self evident that all men are created equal; that they are endowed with certain inalienable rights; those are life, liberty and pursuit of happiness.”\footnote{23} Thus American made their claim on the basis of inalienable rights of man. 13\textsuperscript{th} Amendment of the Constitution of America prohibits slavery and involuntary servitudes. The 15\textsuperscript{th} Amendment lays down that the slavery and

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\begin{itemize}
\item \footnote{20} 25 Encyclopaedia Americana, 1999, p 5
\item \footnote{22} Supra note 19 p. 5.
\item \footnote{23} D.P. Khanna, \textit{Reforming Human Rights}, 2001, New Delhi, Manas Publication, p.39
\end{itemize}
involuntary servitudes, are against the humanity. The 15th Amendment lays down that the citizen's right to vote shall not be denied or abridged on the ground of race, colour or previous condition of servitude. 19th Amendment provides that these rights shall not be abridged on the basis of sex.\textsuperscript{24}

(d) French Revolution (1789):

French Revolution was based upon those principles which were set in motion by the English and American Revolution. It differed mainly in that it was economic and social inequalities of the French ancient regime. On 17th June, 1789 National Assembly endeavored and completed his work on 1791. A list of inalienable rights of citizens was prepared which was proclaimed as the 'Declaration of Rights of Man and of Citizen.' This document was like English Magna Carta and the Bill of Rights in England and the constitution of United States of America. The birth rights of citizens which they had lost were now restored. It proclaimed that men were born free and equal in their rights.\textsuperscript{25}

IV. Human Rights and Pre United Nation Organization:

At the end of First World War an attempt was made to promote the human rights but was unsuccessful. After sometimes, it was realized that the rights of individuals must be universalized, so that it may be guarded against violation by its own state. By

\textsuperscript{24} Supra note 19 p. 6
\textsuperscript{25} Supra note 1 p. 7
influencing this institute of International Law which was private organization and the member of it were from Europe, America and Asia, initiated measures to formulate the provisions of human rights. A proclamation of right of man was issued by it in 1929 which recognized the equal rights of every individual to life, liberty and property. The proclamation also stated that all human being will have right to life, liberty and property without sex, race, language and religion to the equal right to life, liberty and property.  

During Nazi period people were deprived of their life, liberty and property. It caused a global concern that there should be universalization of human rights with the progress of Second World War. Deep concern was shown for internationalization and safeguards of the human rights.

(a)The League of Nations:

The Covenant of the League of Nations the Treaty which in 1920 established the League and served as its constitution, contained no general provisions dealing with human rights an while failing to lay down a principle of non discrimination as requested by Japan, nevertheless committed the league’s members to several human rights goals: fair and humane working condition for men, women and children, the execution of agreements regarding traffic in women and children; the prevention of people from disease and just treatment of colonial people.  

The Versailles treaty ended the first world war and established the mandate system

26 Supra note 1 p. 10
27 Supra note 21p.42.
of League of Nations and International Organization to promote utmost materials and moral wellbeing and social progress of inhabitants.\textsuperscript{28}

(b) The Atlantic Charter, 1941:

In 1941 Prime Minister of Great Britain Mr. W.S. Churchill and the President of the USA; Mr. Franklin D. Roosevelt issued a joint Declaration. It was known as Atlantic Charter. Among other things, they agreed that the respect of the right of all people to choose the form of government restored to those who have been forcibly deprived by them. All the signatories of the Atlantic Charter were convinced that to protect the life and liberty of person, victory over Nazi was essential.\textsuperscript{29}

Besides that, some private organization like International Labour Organization have played crucial role in the development of human rights. In the Philadelphia Declaration of International Labour Organization the resolution was adopted.\textsuperscript{30}

(c) Dumbarton Oaks Proposal:

In the 1944 Dumbarton Oaks proposal for the establishment of the United Nation, was special invention of human rights. One of the provisions was that organization should promote respect for human rights and fundamental freedoms. This statement on the human rights did not please world opinion. Subsequently, as a

\textsuperscript{28} ibid p. 43.
\textsuperscript{27} Supra note 1 p. 11
\textsuperscript{28} "All human being irrespective of race, creed or sex, have the right to pursue both their material well being and their spiritual development in condition of freedom of dignity of economic security and equal opportunity."
result of the historic San Francisco Conference in 1945 the words ‘for all without distinction as to race, sex, language and religion’ were added.31

(V). United Nation Organization and Human Rights:

The idea of human rights emerged strongly after World War II. With the drafting of the Charter of the United Nation, human rights achieved a central place in the world.32

(a) United Nation Charter, 1945:

The United Nation Charter signified that the rights of human being were a matter of international concern, and stated that the purpose of United Nation was to achieve international cooperation in promoting and emerging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language and religion.33 For promoting the respect for and observance of human rights the member states should pledge them to take joint and separate action to achieve this aim.34

The Economic and Social Council a principal organ of the United Nation was directed with the questions of human rights. It appointed a Commission on human rights on 12th February, 1946. As a result, Charter contains a number of provisions for the protection of human rights. The preamble of the charter laid down

31 U.N. Charter, Article 1(3).
32 U.N. Charter Article 55 and 56
that “we the peoples of the United Nations determine to reaffirm faith in fundamental human rights in the dignity and worth of the human person in the equal rights of men and women and of nation large and small”.

The Charter also provided for the achievement of international co-operation in promoting and encouraging respect for human rights without distinctions to race, sex, language and religion.\textsuperscript{35} The General Assembly and Economic and Social Council were given task for realization of promotion of human rights.\textsuperscript{36} The Economic and Social Council was directed to set up the Commission in economic and social field for the protection of human rights, and such other commissions as may be required for the performance of its function.\textsuperscript{37}

In addition to the above provisions, the charter has referred repeatedly the concept of the ‘fundamental rights’, the ‘dignity and worth of human person’, ‘equal rights’, ‘justice social progressive and fundamental freedoms’.\textsuperscript{38} Pursuant to its term of reference the Commission on Human Rights at its second session decided to prepare a ‘Draft Declaration on Human Rights’, a ‘Draft Covenant on Human Rights’ and ‘Measures for Implementation’. These three documents would together constitute International Bill of Rights. In this task Commission was required by the Economic and Social Council to be guided by the observations and suggestions of

\textsuperscript{33} U.N. Charter, Article 1 para 3
\textsuperscript{34} Supra note 32 Article 62
\textsuperscript{35} U.N. Charter ,Article 68
member states of the organization. After an extensive debate the next historic step in the onwards march of human rights was taken in the night of December 10, 1948 in Paris when General Assembly adopted the Universal Declaration of Human Rights by 48 votes to none.

(b) **Universal Declaration of Human Rights:**

Modern international human rights law constitutes a synthesis of various generations, dimensions, concepts and philosophy of human rights. According to its Preamble, the Universal Declaration of Human Right proclaimed on 10th December, 1948 as a common standard of achievement for all people and all nations and as a foundation of freedom, justice and peace in the world.\(^{40}\)

Universal Declaration of Human Rights contains 30 Articles; first part guarantees civil and political Rights while second part recognizes various economic, social and cultural rights. The Universal Declaration has been commonly accepted as being the source of inspiration and the basis for the United Nation in making advances in standard setting as contained in the existing international human rights instruments including the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social and Cultural Rights.\(^{41}\) The Covenant on Economic Social and Cultural Rights, entered into force on 23

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37 Supra note 29, p. 20.
41 Supra note 30 p. 6
March 1976. Article 1,42 243 and 744 express the fundamental right of equal treatment and non-discrimination with respect to guaranteed human rights without distinction of any kind.45 Article 546 of the Declaration provides prohibition against torture. Whereas Article 947 stipulated that no one shall be subjected to arbitrary arrest and detention or exile.

Apart from above, a number of rights referred to the Universal Declaration of Human Rights, 1948. These are right to privacy48, right to fair trial49, right to property50, etc. Although these rights are mentioned in the Declaration but it does not stipulate the means by which these rights shall be protected and promoted. That is why General Assembly on the recommendation of Economic and Social Council adopted a resolution entitled ‘Declaration on the Rights and Responsibility of the Individuals, Groups and Organs of the Society’ to Promote and Protect

42 Article 1 “All human beings are born free and equal in the dignity and rights. They are endowed with the reason and conscience and should act towards on another in spirit of brotherhood”.
43 Article 2, “Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind such as race, colour, sex, language political or other opinion, national or special origin, property birth or other status.”
44 Article 7, “All are equal before the law and are entitled without any discrimination to equal protection of law. All are entitled to equal protection against discrimination in violation of this Declaration and against any incitement to such discrimination.”
45 Supra note 36 p. 39
46 Article 5 provides, “No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.”
47 Article 9, provides, “No one be subject to arbitrary arrest, detention or exile”.
48 Article 12
49 Article 10
50 Article 17
Universally Recognized Human Rights and Fundamental Freedoms’ on December 9, 1998.\(^{51}\)

(c) **International Covenants on Human Rights:**

The Universal Declaration of Human Rights was adopted in 1948 and two International Covenants were adopted in 1966, codifying the two sets of rights outlined in Universal Declaration. These are International Covenant on Civil & Political Rights and International Covenant on Economic Social and Cultural Rights. They came in to force in 1976. Later the General Assembly adopted two Optional Protocols to the International Covenant on Civil and Political Rights. The first Optional Protocol to the International Covenant on Civil and Political Rights 1966, which came into force on 23\(^{\text{nd}}\) March 1976 and the Second Optional Protocol to the International Covenant on Civil and Political Rights, 1989, aiming at the abolition of death penalty, which came into force on July 11, 1991.\(^{52}\) Two Covenants with Universal Declaration of Human Rights and Optional Protocols comprise the International Bill of Human Rights. Civil and Political rights are referred as to the first generation of human rights which distinguishes it from economic social and cultural rights and ‘third generation’ of human rights.

During the time of Cold War, human rights were highly politicized often misused in the ideological debates. Western states

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\(^{51}\) Supra note 36 p. 41  
\(^{52}\) Article 1(2) of the Optional Protocol, 1989.
tried to reduce human rights to a classical concept of civil and political rights. While socialist states maintaining the rhetoric of interdependence of human rights and advocated the predominance of economic social and cultural rights. The Western States succeeded to divide International Bill of Human Rights into two separate treaties. These are, International Covenant on Civil and Political Rights, 1966, and International Covenant on Economic and Cultural Rights, 1966. Both were ratified in 1976. There are provisions for protecting human rights in International Covenant on Civil and Political Rights. International Covenant on Economic Social and Cultural Rights paid equal attention to implementation, promotion and protection of civil and political rights as well as economic, social and cultural rights. In order to enjoy these social rights there is also need to enjoy economic

53 Supra note 38 p.70
54 ibid p. 71
55 Article 6 (1) of the International Covenant on Civil and Political Rights states that right to life of every human being shall be protected by law. Article 17 (2) of the International Covenant on Civil and Political Rights, says that everyone has right to protection of the law against arbitrary interference with his or her privacy, family, home and honor. Article 7 and 10, prohibits against torture. Article 10 of the International Covenant on Civil and Political Rights establishes an obligation on state to ensure human prison conditions by means of positive action regardless of economic difficulties. Articles 15of the International Covenant on Civil and Political Rights prohibits retroactive effect of criminal laws and imposition of heaviest penalty. Article 25 of the International Covenant on Civil and Political rights is the very essence of democracy in terms of subjective rights. Right to equality and non-discrimination are laid down in Article 26.
56 Article 11 of the International Covenant on Civil and Political Rights provides that everyone shall enjoy necessary substance as adequate food and nutrition, clothing housing and necessary condition of care.
rights. These rights are rights to property, right to work\textsuperscript{57} and right to social security\textsuperscript{58}. Article 2 of International Covenant on Economic, Social and Cultural Rights provides that states parties have undertaken legally binding obligations to take step to maximum of their available resources to achieve progressively full realization of economic and social rights in that covenant.\textsuperscript{59}

Article 11 (2) of the International Covenant on Economic Social and Cultural Rights provides that adequate nursing is essential parts of dignity of life. Article 7 of the International Covenant on Economic Social and Cultural Rights, says that State parties recognize the right of everyone to enjoyment of just and favorable condition of work. Article, 12 provides about mental health.\textsuperscript{60}

(d) International Conventions and Other Provisions:

The United Nations Charter affirmed explicitly the equal rights of men and women in its Preamble and included sex among the prohibited grounds of discrimination alongside race, language

\textsuperscript{57} Article 6 of the International Covenant on Economic Social and Cultural Rights.

\textsuperscript{58} Article 9 of the Economic Social and Cultural Rights provides for everyone to social security including social insurance. Article 10 deals with the protection of the family mention social security benefits during maternity leave.

\textsuperscript{59} Supra note 37 p.125

\textsuperscript{60} Article 12 of the International Covenant on Civil and Political Rights says 'state parties to the present covenant recognize the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12 (2) of the International Covenant on Economic Social and Cultural Rights provides that states are required to create conditions which would assure to all medical services and medical attention in the event of sickness.
and religion.\textsuperscript{61} This explicitness of Charter regarding equal rights for women was thereafter reaffirmed and strengthened in a multitude of International Human Rights Treaties.\textsuperscript{62} The period of the codification of women’s legal status lasted from 1945 until the 1969. In 1946, the Economic and Social Council established the Commission on Human Rights with a sub commission on the status of women, which was later deviated to the status of women. However, it became clear during 1960’s that the legal status of women was only one theme that was advancement of women within broader concept of social and economic context.\textsuperscript{63} In 1967, the General Assembly unanimously approved the ‘Declaration on the Elimination of All forms of Discrimination against Women’ which was an attempt to consolidate in one document all of the standards on women’s rights developed in 1945.\textsuperscript{64} This declaration formed the precursor of for the ‘Convention on the Elimination of All Forms of Discriminate against Women’. This convention was adopted by General Assembly on 18\textsuperscript{th} December, 1979.\textsuperscript{65} It was the

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\textsuperscript{62} ibid.
\textsuperscript{64} Article 2 provides that, ‘All appropriate measures shall be taken to abolish existing laws, customs,and, regulations which are discriminatory against women and to establish adequate legal protection for equal rights of men and women.
\textsuperscript{65} Supra note 61 p. 142
\end{flushright}
first document to define discrimination. It extends state responsibility to private action. A Committee on Elimination of All forms of Discrimination against Women (CEDAW) was established by this convention. Convention contains some other provisions also, which have positive approach towards women. Under section 4 of the Convention it is provided that it will exclude affirmative action measures from its definition of discrimination.

The provisions of the Convention cover border area. It covers public and political life, nationality, education, employment, health care and other aspects of social and economic life. There are specific provisions for rural women. Section 16 of the Convention contains a list contains specific rights for women. The convention has an enforcement mechanism whereby governments report to Committee on the Elimination of Discrimination against Women (CEDAW). In 1993 General Assembly adopted the Declaration on the Elimination of Violence

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67 Article 2 (d), 2 (e) and 2 (f) of the Convention, provides that it commits states not just to refrain from engaging in any act or practice of discrimination against women but to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise and to modify or abolish existing laws regulation custom and practices which constitute discrimination against women.
68 Supra note 63.
69 Article 7(8)
70 Article 9
71 Article 10
72 Article 11
73 Article 12
74 Article 13
75 Article 14
76 Article 17 to 22.
against Women. The Preamble to the Declaration on the Elimination of Violence against Women, 1993, states that the declaration is the first international human right instrument so exclusively deals with the issue of violence against women. It affirms that violence against women violates, impairs or nullifies women’s human rights and their exercise of fundamental freedom.\textsuperscript{77} Also the Declaration defines the violence against women.\textsuperscript{78}

In 1946, ‘Commission on the Status of Women’ set up by Economic and Social Council to prepare recommendation and report to the ECOSOC for promotion of women’s right. It also recommended to the council urgent problems requiring immediate attention in the field of women’s right with the object implementing the principle that men and women have equal rights. The commission submits a report on each session of the council.\textsuperscript{79}

The World Conference on Human Rights (Vienna, June 1993) created a precedent by including equal rights of women, and created a platform for the translation of this commitment into holding governments, accountable for safeguarding women’s equal right, Vienna Declaration on Programme of Action, achieved a

\textsuperscript{75} General Assembly Resolution No.48/104, U.N. Declaration No A/48/49.

\textsuperscript{76} Article 1 of the Declaration define, ‘Violence against women’ as any act of gender based violence that result in physical sexual or psychological harm or suffering to women including threats of such act, coercion or arbitrary detention.

precedent by incorporating women's human rights into mainstream.\textsuperscript{80}

In 1995, the push for the women's right as human right culminated in the fourth U.N. Conference on Women, which took place in Beijing with parallel Forum for Non-Governmental Organization. The Beijing Declaration and Global Platform for action adopted at the conclusion of the Fourth U.N. Conference building on at Vienna Declaration and Programme of Action which is described as Bill of Rights for Women.\textsuperscript{81}

Childhood is the most sensitive part of life of every human being. The identity of the individual is formal during childhood. Children comprise about 50 percent of earth's population and are most vulnerable component.\textsuperscript{82} Van Bueren argues that children's right can be distilled down to four core elements identified as protection, prevention, provision and participation.\textsuperscript{83} The concept of equality of all human being as embodied in U.N. Declaration of Human Rights, 1948, recognizes a standard in the field of treatment of the child. The Convention on the Rights of Child is initiated from the period of league of Nation on 'Declaration of the Rights of Childs in 1924.\textsuperscript{84} This Declaration is also known as Geneva Declaration on the Rights of Child. Meanwhile, in 1946 the

\begin{footnotesize}
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\item[80] Supra note 59 p. 249
\item[81] Supra note 61 p.144
\item[84] Supra note 80.
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Temporary Social Commission of Economic and Social Council decided that terms of Geneva Declaration should be binding on the peoples of the world. Subsequently, the Social Commission in 1950 adopted a draft of Declaration on the Rights of Child on the line of Geneva Declaration.\textsuperscript{85} Thereafter the same was forwarded to ECOSOC. ECOSOC considered the Commission’s opinion and sent it to General Assembly. General Assembly adopted and proclaimed the Declaration to the Child on 20\textsuperscript{th} November 1959.\textsuperscript{86} The Declaration contains 10 Articles called ten principles.\textsuperscript{87} It has 10 values of human rights.\textsuperscript{88} But on 20\textsuperscript{th} December 1989, U.N. General Assembly adopted a convention known as the Convention on the Rights of child, 1989. The preamble of the convention affirms that:

\begin{itemize}
  \item Principle 1 Right against discrimination in the enjoyment of rights prescribed in the Declaration.
  \item Principle 2 Right to facilitates and opportunities for development, physically mentally morally, spiritually and socially.
  \item Principle 3 Right to social endurance by birth.
  \item Principle 4 Right to social security for protective care and basic needs.
  \item Principle 5 Right to special treatment and education for physically and mentally retorted children.
  \item Principle 6 Right to full and harmonious treatment and development in loving care of responsive parents in the absence of State.
  \item Principle 7 Right to free and compulsory education in furtherance of general culture and ability to become responsive citizen of tomorrow.
  \item Principle, 8. Right to provides protection and relief.
  \item Principle 9 Right to protection against neglect, cruelty and exploitation.
  \item Principle10 Right to protection against racial, religious and other forms of discrimination.
\end{itemize}


\textsuperscript{84} ibid

\textsuperscript{85} These principles are:

Principle 1 Right against discrimination in the enjoyment of rights prescribed in the Declaration.

Principle 2 Right to facilitates and opportunities for development, physically mentally morally, spiritually and socially.

Principle 3 Right to social endurance by birth.

Principle 4 Right to social security for protective care and basic needs.

Principle 5 Right to special treatment and education for physically and mentally retorted children.

Principle 6 Right to full and harmonious treatment and development in loving care of responsive parents in the absence of State.

Principle 7 Right to free and compulsory education in furtherance of general culture and ability to become responsive citizen of tomorrow.

Principle, 8. Right to provides protection and relief.

Principle 9 Right to protection against neglect, cruelty and exploitation.

Principle10 Right to protection against racial, religious and other forms of discrimination.

\textsuperscript{86} Supra note 83
(i) The children require special emphasis on the primary care and protective responsibilities of the family.

(ii) The need for legal and other protection of child before and after birth.

(iii) The need for respect for cultural values of the child’s community and,

(iv) The vital role of international co-operation in achieving realization of the children’s right.

The Convention recognizes that every human being below the age of 18 years can be called a child. All the rights of children are interrelated. One right will be useless without other right. Likewise, right to life is inherent right of every human being. Right to freedom of expression and right to education are closely related. Same thing is applied in case of right to health and right to social security. An article 14 deal with the child’s right to freedom of thought, conscience and religion. Every child has the right to standard of living adequate for his/her development. Children should not perform any work which may be hazardous or interfere with education, or which may be harmful to their development and health. That is why children have been protected from economic exploitation. Besides above rights, the

87 Article 1 of the Convention on Rights of Child, 1989
88 Article 6 of the Convention on Rights of Child, 1989
89 Article 13 of the Convention on Rights of Child, 1989
90 Article 28 of the Convention on Rights of Child, 1989
91 Article 24 of the Convention on Rights of Child, 1989
92 Article 26 of the Convention on Rights of Child, 1989
93 Article 27 of the Convention on Rights of Child, 1989
94 Article 32 of the Convention on Rights of Child, 1989
convention provides some other rights to the children. The convention has some legal protective guidelines in ensuring harmonious family relation. The convention has also prescribed certain positive regulations for protecting children from exploitive labour and abuses. The state parties are under the obligations to ensure these rights. These rights are enforceable directly against the state.

Apart from the provisions of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Article 2 of the Declaration on Protection of Persons from being subjected to Torture or Degrading Treatment or Punishment, 1975 declares torture as an offence against human dignity which is violation of human rights and fundamental

95 Article 2 - Right against all forms of discrimination; Article 16 - Right to protection of privacy.
96 (i) Article 5 provides for State’s duty to respect parental guideline.
   (ii) Article 9 provides not to be separated from the parents.
   (iii) Article 20, provides for protection of children without family.
   (iv) Article 22, provides for special care for refugee children.
97 (i) Article 32 provides Protection from Child Labour
   (ii) Article 33 provides Protection the Children from drug abuse
   (iii) Article 34 provides Protection against sexual exploitation
   (iv) Article 35 provides Protection against trafficking
   (v) Article 36 provides Protection from all forms of exploitation
   (vi) Article 37 provides Protection from torture and inhuman treatment
   (vii) Article 40 provides Administration of Juvenile Justice, Article 39 provides Prohibition of Cruel treatment and rehabilitative treatment
98 Article 5 of the U.N. Declaration of Human Rights, 1948 provides, “No one shall be subjected to torture or to cruel or inhuman or degrading treatment or punishment.
99 Article 7 of the International Convention on Civil and Political Rights (1966) Provides, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation.
freedoms. The states are directed not to promote and not to tolerate any form of torture even in exceptional circumstances as State of War or internal political instability or emergency.

It also mandates the state parties to take effective measures to prevent all forms of torture. The Declaration imposes obligations on the states to keep a systematic review of the interrogation methods and practices as well as arrangements for the custodial cases. In order to make it more effective the struggle against torture continued with the result that a convention was adopted by the General Assembly on December 10, 1984, which is known as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This is also known as United Nation Convention against Torture, 1984. It came into force on June, 26, 1987. In this Convention state parties are obligated to prevent and punish not only act of torture but also other acts of cruel, inhuman, degrading treatment or punishment. Each state party shall ensure that all acts of torture and its attempt

101 Article 3 of the ‘Declaration on Protection of All Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1975.
102 Article 4 of the Declaration on Protection of All Person from being Subjected to Torture and other Cruel, Inhuman, Degrading Treatment or Punishment.
104 Article 2 of the U.N. Convention against Torture, proclaims that the prohibition against torture is absolute and no exceptional circumstances, what so ever, including war or public emergency or order from superior authority or public servant can be invoked as Justification of torture.
are an offence\textsuperscript{107}. These offences are made punishable according to its gravity.\textsuperscript{108} The state shall not expel, return or eradicate any person to another state where there are substantial grounds for believing that he would be in danger or being subjected to torture.\textsuperscript{109}

Apart from above, there is an Optional Protocol on Convention against Torture, which was adopted by the General Assembly on December 18, 2002 and came into force on October 1, 2004. As regard the implementation of the convention it is mentioned by the United Nation Committee Against Torture who has 10 experts from human rights area. State parties shall submit to the committee its report, regarding measures they have taken. Thereafter, committee will consider the report.

Besides above provisions the Standard Minimum Rules for treatment of prisoners approved by the United Nation Congress on the treatment of offenders held in Geneva in 1955 laid down that the basis of training must be to accord to the prisoners the respect due to their dignity as human being and to establish in them a will to lead a good and useful life on discharge and to fit them to do so\textsuperscript{110}. The Assembly of the United Nation on 6\textsuperscript{th} December, 1966 in the International Convention on Civil and Political Rights adopted following resolutions regarding rights of prisoners\textsuperscript{111}.

\begin{itemize}
\item \textsuperscript{105} Article 4 the U.N. Convention against Torture, 1984.
\item \textsuperscript{106} ibid
\item \textsuperscript{107} Article 3 of the U.N. Convention against Torture, 1984.
\item \textsuperscript{108} Iyer V.R. Krishna; \textit{A Constitutional Miscellany}; 2003, Lucknow, Eastern Book Company p. 171
\item \textsuperscript{109} Article 10 of the International Covenant Civil and Political Rights, 1966.
\end{itemize}
1. All persons deprived of their liberty shall be treated with humanity and with respect for inherent dignity of the human person.

2. (a) Accused person shall, save in exceptional circumstances be segregated from convicted person and shall be subject to separate treatment appropriate to their status as unconvicted person.

(b) Accused juvenile person shall be separated from adults and brought as speedy as possible for adjudication.

3. The preliminary system shall comprise treatment to the prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment to their age and legal status.

The second congress was held in London in 1960. One of the important resolutions was that, the prisoners must be treated as freeman in the community during entire period of his detention. In the congress of 1975 held in Geneva, it was again reiterated that the modern trend to eradicate the cause of crime rather than the criminals by educative, corrective and reformatory methods. When a person who has been convicted or his conviction is reversed by the higher Court or is pardoned shall be compensated according to law. Other than these the Universal Declaration of Human

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110 Supra note 108 p. 172
111 Article 14 of International Covenant on Civil and Political Rights, 1966.
Rights, 1948 has certain provisions regarding human rights of prisoners.\textsuperscript{114}

So far as the protection of Environment is concerned, the parallel evolution of human rights protection and environmental protection discloses some affinities. The treatments by the state of its nationals become matter of international concern. Conservation of environment and control of pollution become likewise a matter of international concern.\textsuperscript{115} There occurs a process of internationalization of both human rights protection and environmental protection. Former begins from 1948 and later with the year of 1972, from Stockholm Declaration on the Human Environment.\textsuperscript{116} India was also a participant and signatory of that conference. In the domain of environmental protection, it was reckoned that after certain activities the products like toxic or dangerous substance and radio active elements, wastes may cause

\begin{itemize}
\item Article 1, ‘All human beings are born free and equal in the dignify and rights’,
\item Article 3, ‘Every one has the right to life liberty and security of person’,
\item Article 5 ‘No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment,’
\item Article 6, ‘Every one has the right to recognition every where as a person before the law’,
\item Article 9, ‘No one shall be subjected to arbitrary arrest detention or exile’,
\item Article 10, ‘Every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligation and of any criminal charge against him’
\item Article 11, ‘Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he had all the guarantees necessary for his defense’
\end{itemize}


\textsuperscript{114} ibid
harmful effect to the environment. Actually the presence of dangerous substances became an issue on globalization level. After two year to Stockholm Conference U.N. Charter on Economic Rights and Duties of states warned that, the protection and preservation of the environment for present and future generation were the responsibility of the states.\textsuperscript{117} In 1980 U.N. General Assembly proclaimed the historical responsibility of the state for the preservation of nature on behalf of the present or future generation.

All human being have the fundamental rights to an environment adequate for health. While entering in to third generation of human rights, it is nothing but imperative to grapple the complementarily of economic growth and sustainability in human rights discourses.\textsuperscript{118} Because of marine pollution, purification of lakes, acid rains, global charge of climate ozone hole and rapid depletion of natural sources will culminate the character of earth. In such atmosphere it is high time to think so that global and natural careful ‘public ordering’ of ecological sustainability can be undertaken.\textsuperscript{119}

Though Universal Declaration of Human Rights, 1948, has no direct reference to environment human right, yet it reflects pediatric conscience in the framework of right to health and proper

\textsuperscript{115} Article 30 of the Declaration of 1972.
\textsuperscript{117} ibid
working environment.\textsuperscript{120} In 1972, Stockholm Declaration on Human Environment, expressly refers common goods to the mankind.\textsuperscript{121} This Declaration proclaimed that man is both creator and holder of environment which gives him physical sustenance and afford him the opportunity for intellectual and moral growth.\textsuperscript{122} Affirming faith on the human environment the Declaration maintains that man has fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well being.\textsuperscript{123} It also imposes duty to protect and improve the environment for present and future generation. The Stockholm Conference rejected the proposal for a ‘Universal Declaration on the Protection and Betterment of the Environment’ as a counter part of the U.N. Declaration of Human Rights.\textsuperscript{124} It says that sovereign rights to exploit the natural sources should be in the conformity of the U.N. Charter. Besides that, Article 1(2),\textsuperscript{125} of the International Covenant on Civil and Political Rights corroborates the significance of environmental

\textsuperscript{118} Article 25 of the Declaration 1948, says ‘everyone has the right to standard of living adequate for the health and welding of himself and for his family including food clothing housing, medical care and necessary services’.

\textsuperscript{119} Supra note 116 p. 123.

\textsuperscript{120} Principle 1,of the United Nation Declaration on Human Environment, 1972.

\textsuperscript{121} Ibid


\textsuperscript{123} Article 1(2) of International Covenant on Civil and Political rights says ‘All people may for their any ends freely dispose of their natural wealth and sources without prejudice to any obligation arising out of international co-operation based upon the principle natural benefits. In no case a people be deprived its own means of subsistence’
human rights. The covenant further makes it logical and substantive.\(^{126}\)

The Rio Declaration on Environment and Development, 1992 also stretched and explicated equality of opportunity for all in access to their basic resources, education, health services, food, housing and employment.\(^{127}\) It places human beings at the centre of concern for sustainable development.\(^{128}\) The Declaration provides that human beings are the centre of concern for sustainable development and are therefore entitled to healthy and productive life in harmony with nature.\(^{129}\)

The Vienna Declaration on Human Right, 1993 reiterates faith that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and of future generations.\(^{130}\) The Vienna Declaration focused on the serious violation of human rights in the wake of incriminates proliferation of hazardous waste and pernicious dimension of science and technology.\(^{131}\) From the above provisions it can be said that the Declaration calls state to adopt and implement existing conventions regarding dumping of toxic and dangerous substances constituting

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\(^{124}\) Article 47 and Article 25 of International Covenant on Civil and Political Rights states that nothing in the present covenant shall interpreted as impairing the inherent right of all people to enjoy and utilize fully and freely their natural wealth and resources.

\(^{125}\) Supra note 122 p. 86.

\(^{126}\) Supra note 113 p.127

\(^{127}\) Article 1 of the Reo Declaration on Environment and Development, 1992


\(^{129}\) ibid

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serious threat of human right to life. The Declaration considers the intergenerational equity and sustainable development in approach of right to life.

Apart from the above the first European Conference on Environmental Human Rights, (Strasburg) took place in 1979. The point was raised that the mankind needed to protect against its own threat to the environment, in particular when these threats had negative repercussions on the conditions of existence like life itself, physical and mental health and well being of present and future generations. It provides protection of individuals against act of other private person.

VI. Regional Conventions on Human Rights:

After U.N. Declaration of Human Rights, 1948, and International Conventions it was felt that there should be regional conventions to promote and protect the human rights. The grouping of the states was created on the basis of economic social, cultural or political factors. For regional conventions it was not necessary that the state continuing a region should be contiguous. The only thing essential is that state should be bound together by the ties of

130 Supra note 122 p. 87
131 ibid
132 Supra note 113 p.130
common interest i.e. there should be identity of certain values and minimum standard. For this, three main regional agencies came into existence. They are;
(a) European Convention on Human Rights.
(b) American Convention on Human Rights.
(c) African Charter on Human Rights and People’s Right.

(a) The European Convention on Human Rights:

The European Convention on Human Rights was signed in 1950 and came into force in 1953. It establishes a regional human rights order. Its purpose is to achieve greater European unity by common understanding and observance of human rights. There are three institutions to function under the convention, these are, the European Commission of Human Rights, the European Courts of Human Rights and the Committee of Ministers of the Council of Europe. Under section 1 of the convention the human rights and freedoms are provided. These are right to life, right to liberty and security of person, freedom from torture or to inhuman or degrading treatment or punishment, freedom from forced labour, right to fair and public hearing.

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134 ibid
136 ibid.
137 Article 2 of the European Convention on Human Rights
138 Article 5 of the European Convention on Human Rights
139 Article 3 of the European Convention on Human Rights
140 Article 4 of the European Convention on Human Rights
141 Article 6 of the European Convention on Human Rights
142 Article 5 of the European Convention on Human Rights
143 Article 6 of the European Convention on Human Rights
The European Court of Human Rights came into force on 3rd September, 1958. Again it was restructured in 1998. This Court has jurisdiction to decide the cases either brought by high contracting parties or by individuals. The Court is empowered to receive individual’s application for the violation of human rights. It may receive application from any person, non-governmental organization or group of individuals claiming to be the victim of violation by one of the high contracting parties of the rights.\textsuperscript{144} The judgment of the Court will be final.

(b) The American Convention on Human Rights, 1978:

The Inter American Specialized Conference on Human Rights held at San Jones, Costarica in November, 1969 and was signed on November 22, 1969. It came in to force on July 11, 1978.

The Convention contains civil and political rights, as well as economic, social and cultural rights. The main civil and political rights contained in it are, right to life\textsuperscript{145}, right to human treatment\textsuperscript{146}, freedom from slavery\textsuperscript{147}, right to personnel freedom\textsuperscript{148}, right to fair trial\textsuperscript{149}, right to privacy\textsuperscript{150}, rights to the child\textsuperscript{151}, right to equal protection of the law\textsuperscript{152}, etc.

The American Convention on Human Rights concluded an Additional Protocol in the area of economic social and cultural

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\textsuperscript{142} Supra note 138, p.157.
\textsuperscript{143} Article 4 of the American Convention on Human Rights
\textsuperscript{144} Article 5 of the American Convention on Human Rights
\textsuperscript{145} Article 6 of the American Convention on Human Rights
\textsuperscript{146} Article 7 of the American Convention on Human Rights
\textsuperscript{147} Article 8 of the American Convention on Human Rights
\textsuperscript{148} Article 11 of the American Convention on Human Rights
\textsuperscript{149} Article 19 of the American Convention on Human Rights
\textsuperscript{150} Article 24 of the American Convention on Human Rights
rights in 1988, in which some rights are mentioned. These are, right to work\textsuperscript{153}, right to health\textsuperscript{154}, right to healthy environment\textsuperscript{155}, right to food\textsuperscript{156}, right of children\textsuperscript{157}, etc. Article 26 of the convention stipulates that the state parties undertake to adopt measures both internally and through international co-operation.\textsuperscript{158}

There is Inter American Court of Human Rights to consider the cases submitted by the Inter American Commission on Human Rights or by the States. There is difference between American Convention and European Convention. The American Convention stated the individual’s duties as well as individual’s rights while the European Convention lays down only the rights and not the duties of individuals.\textsuperscript{159}

(c) African Charter on Human Rights and People’s Right:

The African Charter also known as Banjul Charter was adopted on June 27, 1981, and came into force on October 26, 1986. The Charter stipulates rights and duties of individuals. Chapter I deal with human rights. They are equality before law\textsuperscript{160},

\begin{itemize}
  \item Article 6 of the Addition Protocol on American Convention on Human Rights
  \item Article 10 of the Addition Protocol on the American Convention on Human Rights
  \item Article 11 of the Addition Protocol on American Convention on Human Rights
  \item Article 12 of the Addition Protocol on American Convention on Human Rights
  \item Article 16 of the Additional Protocol on American Convention on Human Rights
  \item Supra note 138 p. 164
  \item ibid p.169
  \item Article 3 of African Charter on Human Rights and People’s Rights
\end{itemize}
right to respect life and integrity of his persons\textsuperscript{161}, right to respect the dignity of human being\textsuperscript{162}, right to health\textsuperscript{163}, right to economic social and cultural development\textsuperscript{164}, right to general satisfactory environment\textsuperscript{165}, etc.

The Charter established a commission to promote human rights and people’s right in Africa. There is a Court named African Court on Human and People’s Rights. It was established through a Protocol to the African Charter on 9\textsuperscript{th} June 1998. The protocol came in to force on 24\textsuperscript{th} January, 2004. The following are entitled to submit the case before the Court.\textsuperscript{166}

(i) The African Commission on Human and People’s Right.
(ii) The state party which has filed a complaint to the commission.
(iii) The state party against whom the complaint has been filed.
(iv) The state party whose citizen is victim of human right violation, and
(v) African Inter-Governmental Organization.

Regarding individual’s petition the protocol provides that the Court may consider individual’s petition against state which has recognized the competence of the Court to receive such communications.\textsuperscript{167}

\textsuperscript{159} Article 4 of African Charter on Human Rights and People’s Rights
\textsuperscript{160} Article 5 of African Charter on Human Rights and People’s Rights
\textsuperscript{161} Article 16 of African Charter on Human Rights and People’s Rights
\textsuperscript{162} Article 22 of African Charter on Human Rights and People’s Rights
\textsuperscript{163} Article 24 of African Charter on Human Rights and People’s Rights
\textsuperscript{164} Article 5 (2) of African Charter on Human Rights and Peoples Rights
\textsuperscript{167} Article 5 para 3 of the Protocol to the African Charter on Human Rights and People’s Rights