Chapter-III

INTERNATIONAL HUMAN RIGHTS LAW

3.1. Introduction

In a common parlance law means those laws enacted by nation States. These laws usually address individuals within the state. But with regard to International Law there has always been a debate as to its enforceability. This was in particular with regard to the impact of these laws on individuals.

It is often argued that International Law is not a true law. This argument mainly emanated from the positivist thought. According to them International Law is provided with no sanction. The victims of the breach of the law have no remedies against the violating State. Also there is a lack of sovereign status to command and enforce sanctions against the violators of the norms. These elements were the essential features of law in the positivist sense. Hence they considered International Law (law of nations) simply as a practice of civilized communities. It is only a positive international morality.

The prominence received by States in International Law is the result of the dominance achieved by the positivist school over the Naturalist school. It was Bentham, who initiated a debate with the then existed naturalist view. The new view received acceptance of the scholars. Thus the dominant view is that individuals, not being subjects of International Law, are not accorded with any right.

The term ‘International Law’ is usually used to denote norms regulating transactions between sovereign States. Its main concern is with the regulation of the rights, duties and interest of States. However it has always been a subject of discussion as to whether this law is concerned exclusively with the above matters of

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2 According to Bentham, Transactions between individuals or those between a sovereign and an individual are to be governed exclusively by internal laws. International law is concerned only with the mutual transaction between sovereigns as such; see infra. n. 3.
the States. The debates regarding it are mainly concerned with the subjectivity of individuals under International Law.

The positivists dominated in the debate. This dominance resulted in the denial of subjectivity of individuals under the International Law. According to Bentham, International Law is concerned exclusively with the transactions between sovereigns. But at a later stage, the positivists had to take a slight deviation from this strict view. They had to acknowledge that International Law is concerned of individuals also. Accordingly individuals were considered as objects of international law.

The dominance of positivist thinking in the field of International Law prevented the Human Rights being projected as a serious concern of international community. This was mainly due to the thinking that it was for the nation State to make appropriate legislations. This attitude was further strengthened by the assertion of state sovereignty which concedes enormous power to the nation States to control matters within their jurisdiction. However the atrocities perpetrated by the authorities under the nation States which resulted in the gross violation of Human Rights, especially in Germany under the Nazi regime was a turning point. It prompted the international community to consider the need for the protection of Human Rights in the international scenario. The task was mainly taken up by the United Nations.

3.2. Human Rights Provisions under the UN Charter

The Charter reflects a new approach to the protection of human liberty and freedom, born of the experience of World War II and the years immediately preceding it, when flagrant violation of Human Rights and the denial of the basic dignity of man were the hallmarks of regimes challenging and violating International peace and security. The significance of the Human Rights provisions in the Charter are described by Lauterpacht:

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“For its goals the United Nations Programme is heir to all great historic movement for man’s freedom (including the English, American, and French Revolutions and the events they set in train) to the enduring elements in the tradition of natural law and natural rights and in most of the world’s great religions and philosophies, and of the findings of contemporary science about the inter relations of simple respect for human dignity and all other individual and community values.”

Of the various Human Rights provisions contained in the Charter, the first is in the preamble[8] which provides, “we the peoples of United Nations”[not merely the Members States,] reaffirm “faith in fundamental Human Rights and in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…”

Article 1 (3) include, among stated purposes, the achievement of “international co-operation in solving international problems… 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 General Assembly shall initiate studies and make recommendations for the purpose of assisting in the realization of Human Rights and fundamental freedom for all. The most important are probably those contained in Articles 55 and 56 of the Charter. Article 55 provides that the “United Nations shall promote Inter alia, Universal respect for and observance of Human Rights and Fundamental Freedoms for all without distinction as to race, sex, language or religion”. While in Article 56 “ all members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55 “.The Economic and social Council may also, “ make recommendations for the purpose of promoting respect for and observance of Human Rights and Fundamental Freedoms for all.” Further, it is also provided that the Economic and Social Council shall set up Commissions for ‘the protection of Human

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8 The Preamble to the Charter was written by field Marshall smuts.
9 Article 13 (1) (b) of the Charter of United Nations.
10 Ibid., Article 62
Rights\textsuperscript{11}. Provisions are also made under Article 76(c) as the basic objective of the Trusteeship system, “to encourage respect for Human Rights and Fundamental Freedoms for all without distinction as to race, sex, language or religion….”\textsuperscript{12}

The Charter speaks of the protection of ‘Human Rights’ without elaborating and indicating the content of such rights specially the rights that are eligible to protection and this necessitated the adoption of Universal Declaration of Human Rights.

3.3. The Universal Declaration of Human Rights, 1948

In the San Francisco Conference the President Truman stated that:

“We have good reason to expect the framing of an International Bill of Rights, acceptable to all the Nations involved… The Charter\textsuperscript{13} is dedicated to the achievements and observance of Human Rights and Fundamental Freedoms. Unless we can attain those objectives for all men and women everywhere without regard to race, language or religion. We cannot have permanent peace and security\textsuperscript{14}.”

To give effect to this proposal, and pending the adoption of an International Bill of rights, the General Assembly of the UN adopted on 10 December 1948 a declaration of principles and standards in the form of a Universal Declaration of Human Rights. It was not conceived as imposing legal obligations on States. The operative part of the Resolution of the General Assembly stated:

“Now therefore, the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society. Keeping this Declaration constantly in mind, shall strive by teaching and education to promote

\textsuperscript{11} Ibid., Article 68
\textsuperscript{12} The Charter refers generally to fundamental Human Rights in Articles 1 (3), 55 (c), 62 (2), 68 and 76(c).
\textsuperscript{13} The Charter of United Nations.
\textsuperscript{14} Quoted in A.H. Robertson, “Human Rights in the World, (ed), (1972) p.25
respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the people of territories under their jurisdiction.\textsuperscript{15}

The Declaration was drafted in pursuance of the disposition of the Charter introducing the promotion of respect for Human Rights, as an international concern of primary importance. The Declaration, in fact, elaborates on the Charter and gives a definition of substance\textsuperscript{16}. It expresses the spirit of the Charter by setting out in detail what in the Charter itself was already included\textsuperscript{17} as one of the principal aims and purposes of the UN. The legal significance of the Declaration, therefore, rests upon the Charter provisions\textsuperscript{18}. The Declaration does not contain individual rights under positive law; it sets out a legislative programme in municipal and International Law to be attained by joint and separate action of member States of the United Nations.

The Declaration contains 30 Articles, 21 of which set forth Civil and Political rights and 6 of which cover economic, Social and Cultural Rights. There were 58 Members of the UN at the time the Declaration was adopted\textsuperscript{19}. Articles 22-27 guarantee the economic, Social and Cultural Rights of the individual, which demand recognition and protection under the modern developments of technical and industrial progress.

\textsuperscript{15} H. Kelson “Law of United Nations” (1951), p. 34
\textsuperscript{16} Pieter N. Drost., \textit{Human Rights as Legal Rights} (1965), p. 33
\textsuperscript{17} The Charter refers generally to fundamental Human Rights in Articles 1 (3), 55 (c), 62 (2), 68 and 76 (c). The statement of the purposes of the United Nations, in Article 1 (3) includes international cooperation in promoting and encouraging respect for Human Rights and fundamental freedoms. The General Assembly of the United National is authorized by the Charter to initiate studies and make recommendations for the purpose of assisting in the observance of Human Rights and freedoms (Article 13). The promotion of Universal respect and observance of, Human Rights and freedoms for all without distinction as to race, sex, language, or religion figure in the statement of the objects of the organization in the field of economic and social co-operation (Article 55) and of the Trusteeship (Article 76). Moreover, the Economic and social council of the United Nations under Article 62 of the Charter is authorized to make recommendations for the purpose of promoting respect for, and observance of Human Rights and fundamental freedoms
\textsuperscript{18} Pieter N. Drost, note 19, p.33
The Declaration provides that ‘every one has the rights to life, liberty and security of the person’; to recognition as a person before the law; to equality before the law; to specified judicial safeguards in criminal trials; to freedoms of movement within the country and the right to leave; to a right to asylum; to a right to nationality; to the right of property; to the freedom of thought conscience, religion, opinion and expression; peaceful Assembly and association; to the right to social security; right to work and to join trade unions for protection; to the right to an adequate standard of living and education, to participate in the cultural life of the community; to enjoy the arts and share in the scientific advancement and benefits. These rights are provided for the overall development of the individual on political, economic and social fronts both in the national and international sphere.

The Declaration is not addressed to the international lawyer; it is a declaration of principles directed to the peoples of the world. This has been considered as one of the greatest achievements of the UN. Mrs. Roosevelt, the then chairperson of the Commission on Human Rights, stated in the General Assembly, that the Declaration was, ‘first and foremost a Declaration of the basic principles to serve as a common standard for all nations…’ “it might well become the Magnacarta of all mankind. Its proclamation by the General Assembly would be of importance comparable to the 1789 proclamation of the Declaration of the Rights of man, reporting in the Declaration of Independence of the United States of America and similar declaration made in other countries”.

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20 Article 3 of the Universal Declaration of Human Rights, 1948.
21 Ibid., Article 6
22 Ibid., Article 7
23 Ibid., Article 8 & 11
24 Ibid., Article 13.
25 Ibid., Article 14
26 Ibid., Article 15
27 Ibid., Article 17
28 Ibid., Article 18 & 19
29 Ibid., Article 20
30 Ibid., Article 22
31 Ibid., Article 23 & 24
32 Ibid., Article 25 & 26
33 Ibid., Article 27
34 Pieter N Drost, note, 21, p. 34
35 Quoted by A. H. Robertson, Human Rights in the World (1972), p. 27
3.3.1. The Impact of the Universal Declarations on Subsequent Declarations and Recommendations of the United Nations.

In certain important recommendations and declarations adopted by the UN General Assembly since 1948, the Universal Declaration has been referred to as if it were on the same level as the Charter itself. Evidence of this is found in the following Declarations:

a. The Declaration on the Granting of Independence to Colonial Countries and People’s of 1960\textsuperscript{36}, which was adopted by 89 votes\textsuperscript{37} to none with nine abstentions, provides in its seventh and final paragraph that “all States shall observe faithfully and strictly, the provisions of the Universal Declaration of Human Rights”\textsuperscript{38}

b. The Declaration on the Elimination of All forms of Racial Discrimination, which the General Assembly, unanimously adopted on 20\textsuperscript{th} November 1963, in Article 11 provides that, “every state shall promote respect for and observance of Human Rights and Fundamental Freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the Universal Declaration of Human Rights”\textsuperscript{39}

c. In the same year, on 4\textsuperscript{th} December 1963, the Security Council adopted a Resolution, which speaks of “apartheid as being in violation” of South Africa’s ‘obligations’ as a Member of the United Nations and of the provisions of the Universal Declaration of Human Rights”\textsuperscript{40}

d. On 27\textsuperscript{th} October 1965 the General Assembly issued a Resolution terminated the mandate of South Africa over South West Africa (Namibia) on the ground that the Mandate\textsuperscript{41} had “been concluded in a manner contrary to the mandate, the Charter of the United Nations and the Universal Declaration of Human Rights”\textsuperscript{42}

\textsuperscript{36} General Assembly Declaration 1514 (XV) of December 1960
\textsuperscript{37} Including the votes of all the States except South Africa which abstained in the voting on the Universal Declaration in 1948.
\textsuperscript{39} General Assembly Resolution, 1904 (XVIII) of 20\textsuperscript{th} November, 1963.
\textsuperscript{40} Resolution S/471
\textsuperscript{41} Provided under the League of Nations.
\textsuperscript{42} Resolutions 2145 (XXI)
e. The Principles enshrined in the Universal Declaration have been directly incorporated in a series of subsequent International Conventions adopted by the United Nations and its Specialized Agencies. For instance, mention can be made of the International Covenant on Civil and Political Rights adopted by General Assembly on 16 December 1966, in its preamble stated that, “the state Parties to the present Covenant... in accordance with the principles proclaimed in the Chapter of the United Nations... Recognizing that, in accordance with the Universal Declaration of Human Rights the ideal of free human beings enjoying Civil and Political freedom and freedom from fear and want can only be achieved if conditions are created where by everyone may enjoy his Civil and Political rights, as well as his economic Social and Cultural Rights”. Similar expression is found in the preamble to the International Covenant on Economic Social and Cultural Rights as well.

f. Article 2 of the Proclamation of Tehran of 1968, Which was later endorsed by the General Assembly declared that the Universal Declaration of Human Rights “Constitutes an obligation for the members of International Community”.

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43 Ian Brownlie, note 58.

Mention can be made here the convention for the Suppression of the Traffic of Persons and of the Exploitation of the prostitution of others (1949); The convention Relating to the Status of Refugees (1951); the convention on the political Rights of Women (1952); The convention Relating to the Status of Stateless persons (1954); The supplementary convention on the Abolition of slavery, the slave Trade and the Institutions and practices similar to slavery (1956); The convention on the Nationality of Married Women (1957); The convention on the Forced Labour (1957); The convention on the Reduction of stateless ness (1961); The convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages (1962); The International Convention on the Elimination of all Forms of Racial Discrimination (1965); The International convention Against the Taking of Hostages (1977); The International convention on the Elimination of all Forms of Discrimination Against Women, (1979), convention Against Torture, and other cruel Inhuman and Degrading Treatment of punishment (1984); The convention on the rights of the child (1989); convention on the protection of the Rights All Migrant Workers and Members of their Families (1990). Among the Conventions adopted by the UN Specialized Agencies mention can be made here of right to Organize and collective Bargaining convention (1949); Equal Remuneration convention (1951); UNESCO convention Against Discrimination in Education (1960)


45 Note 48.

46 On 19 December 1968.
g. Section VII of the Helsinki Declaration of 1975\textsuperscript{47} says inter alia that “in the field of Human Rights and fundamentals freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights.”

The aforementioned references to the Declaration in important international instruments of Human Rights speak volumes of its impact on the growth of existing Human Rights law at the municipal level. The Declaration in essence is a yardstick to measure the degree of respect for Human Rights by governments, by international conferences, by regional inter-governmental organizations, by specialized agencies, and by the United Nations.

In less than five months of the Adoption of the Declaration, on 25 April 1949, the General Assembly invoked two of its Articles. Article 13 on the right of everyone to leave any country including his own and Article 16 on the right to marry without any limitation due to race, nationality or religion – in a Resolution stating that “measures which prevent or coerce the wives of the citizens of other nationalities from leaving their country of origin with their husbands or to join them abroad are not in conformity with the Charter” and recommended that the Soviet Union withdraw measures of that type\textsuperscript{48}. It is interesting to note that said Resolution does not say that the Declaration is binding; but it does say, after invoking the two articles in question, that the measures adopted by the Soviet Union were not in conformity with the Charter. Since the Charter neither catalogues nor defines Human Rights, the

\textsuperscript{47}. Helsinki conference on security and co-operation in Europe of 1975.

The Universal Declaration has inspired even subsequent like the Declaration of the Rights of Child (1959); Declaration on the Promotion Among Youth of the Ideals of peace, Mutual Respect and Understanding between people (1965); Declaration on the Elimination of Discrimination Against women, (1969); Declaration on the Rights of Mentally Retarded persons (1971); Declaration on the use of scientific And Technological progress in the Interest of peace and for the Benefit of Mankind (1975); Declaration on the Rights of Disabled persons (1975); Declaration on the protection of all persons from being subjected to Torture and other cruel, Inhuman or Degrading Treatment or punishment (1975); Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion of Belief; Declaration on the Protection of women and children in Emergency and Armed conflict; Declaration on the Human Rights Of Individuals who are not Nationals of country in which They Live (1985); and many more until now.

\textsuperscript{48}. General Assembly Resolution, 285 (III).
logical and inescapable conclusion is that the States, which voted for the Resolution, were using the Declaration to interpret the Charter.\footnote{For an interesting discussion see John P. Humphrey, “The Universal Declaration of Human Rights: Its History Impact and Juridical Character”. In Dr. B.G. Ramcharan (ed.), Human Rights: Thirty Years After the Universal Declaration (1979), pp. 34-35.}

3.3.2. Influence of the Universal Declaration on National Constitutions, Municipal Laws and Court Declarations.

The provisions of the Universal Declaration of Human Rights have influenced various National Constitutions enacted after the adoption of the Universal Declaration. For example, the Constitutions of Algeria, Burundi, Cameroon, Chad, Democratic Republic of Congo, Dhaomey, Guinea, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Senegal, Togo and Upper Volta - the peoples of these countries solemnly affirmed their devotion to the principles and ideals of the Universal Declaration. The principles and ideals of Declaration are also found in municipal law in a number of laws and decrees enacted in various countries. The Indian Constitution bears the impact of the Universal Declaration and this has been recognised by the Supreme Court of India. While referring to the Fundamental Rights contained in part III of the Constitution in Kesavanand Bharti v. State of Kerala,\footnote{AIR 1973 SC 1461, 1536; See also Patanjali Sastri, C.J. in State of West Bengal v. Subodh Gopal, AIR 1954 SC 92: 1954 SCR 587, 596; per Hidayatullah, J. in Ujjamabai v. State of U.P., (1963) ISCR 778, 926-927: AIR 1962 SC 1621; Moti Lal v. State of U.P., ILR (1951) 1 All 269, 387-388: AIR 1951 All 257 (FB): per S.K. Das. J. in Basheshar Nath v. CIT, (1959) Supp. 1 SCR 528,605: AIR 1959 SC 149.} Sikri, C. J. of the supreme court observed: “I am unable to hold that these provisions show that some rights are not natural or inalienable rights. As a matter of fact, India was a party to the Universal Declaration of Human Rights... and that Declaration describes some fundamental rights as inalienable.

3.3.3. Legal Significance of the Universal Declaration of Human Rights.

There is a great controversy in regard to the legal significance of the Universal Declaration. On the one hand, there are those writers who subscribe to the view that the Universal Declaration is not a legally binding instrument. On the other hand, there are some writers who have expressed the view that the Declaration might not have
been binding when it was adopted in 1948 but it has now become binding or assumed legal implications. Besides these two views, there are a number of authors who have expressed the view that although the Universal Declaration is not legally binding yet it has a great moral and political force behind it and serves as general guide, code of conduct or yardstick with which the action of men and women and nations are judged so far as the respect for and observance of Human Rights are concerned.

According to Palmer and Perkins⁵¹, “The declaration is merely a statement of principles, not a legally binding instrument; but it has become one of the best known international documents, and it has referred to in resolution of the U.N., the Specialized Agencies, Regional Arrangements and other International Organization, and in National Constitutions, legislation, and court decision. It is a beacon light for all mankind, even though it has been honoured more often in the breach than in the observance.” In the view of Starke⁵², “…. the Declaration could not and did not purport to be more than manifesto, a statement of ideals, a ‘path-finding instrument’… Yet it has had a remarkable influence on further developments, at both the international and domestic levels, as is reflected in the number of instances of Conventions and other instruments referring to, or invoking, its provision.” Oppenheim also subscribes to this view. According to him, “… the Declaration is not an instrument which is legally binding either directly or indirectly; in particular, there is no warrant for assuming that it can properly be resorted to for the interpretation of the provisions of Human Rights and fundamental rights⁵³.” The ninth edition of Oppenheim’s International Law⁵⁴ adds “However, in the years since its adoption, the widespread acceptance of the authority of the Declaration has led some to the opinion that while the Declaration as an instrument is not a treaty, its provision may have come to the embodiment of new rules of customary law in the “Matter.” In the view of Lauterpacht, the moral authority and influence of an international pronouncement

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⁵³ Oppenheim, s International Law, 1, Eighth Edition, Edited by H. Lauterpacht,p. 745; and note 2 and p. 1003.
of this nature must be in direct proportion to the degree of sacrifice of the sovereignty of States which it involves. Most of the writers who subscribe to the view that the Universal Declaration is not a legally binding instrument, however, concede that it “has gained considerable authority as a guide to the content of fundamental rights and freedoms as understood by members of the United Nations, and it is important as providing a connecting link between different concepts of Human Rights in different parts of the world.”

Ian Brownlie goes a step ahead and writes: “The Declaration is not a legally binding instrument as such, and some of its provisions depart from existing and generally accepted rules. Nevertheless some of its provisions either constitute general principles of law or represent elementary consideration of humanity. More important is its status as an authoritative guide produced by the General Assembly to the interpretation of the Charter. In this capacity, the Declaration has considerably indirect legal effect and is regarded by the Assembly and by some jurists as apart of the law of the United Nations. This observation is significant because it indicates the shift that is taking place in the view of the writers in respect of the legal value of the Universal Declaration.

3.4. The International Covenant on Civil and Political Rights, 1966.

The International Covenant on Civil and Political Rights, 1966 comprises of 53 Articles divided into VI parts. For the convenience of study, these Articles may be classified into the following categories:

(a) Preamble
(b) General (Articles 1 to 3 and 5)

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(c) Rights in Emergency (Articles 4).
(d) Substantive Rights (Articles 6 to 27).
(e) Implementation of Enforcement Machinery (Articles 28 to 45).
(f) Interpretation of Saving Provision (Articles 46 to 47).
(g) Final or concluding provisions, regarding ratification, of accession of the Covenant, amendments, etc.

(a) Preamble – The keystone of the Covenant on Civil and Political Rights, 1966 are the Charter provisions concerning the Human Rights and the Universal Declaration of Human Rights, 1948, which is rightly reckoned as the mine from which all instruments on Human Rights have quarried. That is why “considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace in the World, the state parties to the Covenant recognize that these derive from the inherent dignity of the human person and that in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying Civil and Political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his Civil and Political rights as well as his economic, Social and Cultural Rights”. Moreover, “considering the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of Human Rights and freedoms,” and “realizing that the individual, having duties to other individuals and to the community to which he belongs is under responsibility to strive for the promotion and observation of the rights recognized in the present Covenant”, the States parties to the present Covenant agreed upon the article incorporated in the Covenant.

(b) General (Articles 1 to 3 and 5) – Articles 1 to 3 and 5 of part I and part II of the Covenant are general. Article 1 provides that all peoples have the right of self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may for their own ends, freely dispose of their natural wealth and

59 Article 1, paragraph 1.
resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of natural benefit and international law. In no case may a people be deprived of its own means of subsistence. Further, the State parties to the present Covenant, including those having responsibility for the administration of non-self Governing and Trust Territories shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Through Article 2 which occurs in part II of the Covenant, each state party to the Covenant “undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Where legislative or other measures do not exist to give effect to the rights recognized in the Covenant, each State party undertakes to take the necessary steps, in accordance with its Constitutional processes and with provision of the present Covenant, to adopt such legislative or other measures to give effect to the rights. Further, each state party to the Covenant undertakes:

(a) to ensure that any person whose rights or freedoms recognized in the Covenant are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in official capacity;
(b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, authoritative or legislative authorities, or by any other competent authority provided for by the legal system of the State and to develop the possibilities of judicial remedy;

60 Article 1, para 2.
61 Article 1, para 3.
62 Article 2, part 1.
63 Article 2, Para 2.
(c) To ensure that the competent authorities shall enforce such remedies when granted\textsuperscript{64}.

Through Article 3, the parties to the Covenant undertake to ensure the principle of equal right of men and women to the enjoyment of all Civil and Political rights set forth in the Covenant.

Article 5 makes it clear that nothing in the Covenant may be interpreted as implying for any state, group or person, any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant\textsuperscript{65}. Further, there shall be no restriction upon or derogation from any of the fundamental Human Rights recognized or existing in any State party to the present Covenant pursuant to law, Conventions, regulations or custom on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent\textsuperscript{66}.

(c) \textbf{Civil and Political Rights in Emergency}- Public Emergency which threatens the life of the nation require emergent or exceptional measures which may not be normally permissible. Article 4 of the Covenants, therefore, permits the State parties to take measures, during such emergency provided that the existence of which is officially proclaimed, derogating from their obligation under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under International Law and do not involve discrimination on the ground of race, colour, sex, language religion or social origin\textsuperscript{67}. But it is made clear that this provision will not permit the State parties to make any derogation from Article 6 (dealing with inherent or punishment etc..) Article 7 (Prohibition of torture or cruel, inhuman or degrading treatment or punishment etc..) Article 8 (Paragraphs 1 and 2 – dealing with prohibition of slavery, slave trade or servitude) Article 11 (Prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation) Article 15 (Prohibition of punishment on any criminal offence not constituting a criminal offence under national

\textsuperscript{64} Article 2, Para 3.  
\textsuperscript{65} Article 5, Para 1.  
\textsuperscript{66} Article 5, Para 2.  
\textsuperscript{67} Article 4, para 1.
or International Law and ex-post facto laws), Article 16 (recognition everywhere as a person before law), and Article 18 (dealing with freedom of thought, conscience and religion). It is further provided that any State party which avails the right of derogation shall inform other parties of the Covenant of such derogation and reasons there of and shall also inform the date on which such derogation is permitted.69

(d) **Substantive Civil and Political Rights** – Article 6 to 27 of Part III of the Covenant enumerates specific substantive Civil and Political rights. They are:

(i) Right to life70
(ii) Prohibition of torture or cruel, inhuman or degrading treatment or punishment and prohibition of medical or scientific experimentation without free consent71
(iii) Prohibition of slavery, slavery trade, servitude, forced or compulsory labour72
(iv) Right to liberty and security of person and freedom from arbitrary arrest or detention73
(v) Right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person74.
(vi) Prohibition of imprisonment merely on the ground of inability to fulfil a contractual obligation75.
(vii) Right to liberty of movement and freedom to choose residence and right not to be arbitrary deprived of entering his own country76.
(viii) Freedom of aliens lawfully in the territory of a State Party to Covenant from arbitrary expulsion77.
(ix) Right to equality before the courts and tribunals; right to a fair and public hearing; and right of everyone charged with a criminal offence to be presumed innocent until proved guilty according to law78.
(x) Non-retroactive application of criminal law79.

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68 Article 4, para 2.
69 Article 4, para 3.
70 Article 6.
71 Article 8
72 Ibid
73 Article 9
74 Article 10
75 Article 11
76 Article 12
77 Article 13
78 Article 14
(xi) Right to be recognized everywhere as a person before the law.
(xii) Right of everyone not to be subjected to arbitrary or unlawful inference with his privacy, family, home or correspondence and freedom from unlawful attacks on his honour and reputation.
(xiii) Freedom of thought, conscience and religion.
(xiv) Right to freedom of opinion and expression.
(xv) Prohibition of propaganda of war and advocacy of national, racial or religious hatred Constitution incitement to discrimination, hostility or violence.
(xvi) Right of peaceful Assembly.
(xvii) Right to freedom of association including the right to from and join trade unions for the protection of interests.
(xviii) Right to marry and to found a family.
(xix) Right of every child to be protected according to his status as minor on the part of his family, society and the state, and the right of every child to acquire a nationality.
(xx) Right of every citizen to take part in the conduct of public affairs, to vote and to be selected, and to have access, on general terms of equality, to public service in his country.
(xxi) Equality before law.
(xxii) Right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language (Article 27).

The rights set forth in the Covenant on Civil and Political Rights are not absolute and are subject to limitations. While the formulation of the limitations differs

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79 Article 15
80 Article 16
81 Article 17
82 Article 18
83 Article 19
84 Article 20
85 Article 21
86 Article 22
87 Article 23
88 Article 24
89 Article 25
90 Article 26
91 The subject of minorities was not included in the Universal Declaration because the General Assembly stated at that time its complexity made a uniform solution difficult.
as far as details are concerned from article to article, the Covenant, by and large, provides that the rights shall not be subject to restrictions except those specified by law, and those which are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others. Some of the rights are not subject to any specific restrictions, for example, the right to freedom or thought, conscience and relation, as distinct from the right to manifest religion or belief, and the right to hold opinions without interference, as distinct from the right to freedom of expression. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the Covenant on Civil and Political Rights may make measures derogating from the obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under International Law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion, or social origin, on the other hand some of the rights are considered by the Covenant to be so essential that no derogation from them may be made even in time of public emergency. These rights and the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, the prohibition of imprisonment merely, on the ground of failure of liability to fulfil a contractual obligation, the principle nulla poena sine lege, the right of everyone to recognition as a person before the law, and freedom of thought, conscience and religion.

(e) Implementation or Enforcement Machinery (Articles 28 to 45). – The implementation or enforcement machinery is provided under Part IV of the Covenant. The Covenant provides for the establishment of an eighteen-member Human Rights Committee. The committee performs the function of implementation of the Human Rights in the following ways:

(i) The Reporting procedure,
(ii) The Inter-State Communication system;
(iii) Conciliation Commission; and

93 Ibid., at pp. 83-84.
94 Article 28.
95 See Article 44 and 41.
96 See Article 41.
(iv) Individual’s Communication system

The last mentioned measure of implementation, namely individual’s communication system does not find mention in the Covenant on Civil and Political rights. It finds mention in the optional protocol to the International Covenant on Civil and Political Rights. This measure of enforcement of Human Rights is available only to those individuals whose States are parties to the Covenant on Civil and Political Rights, 1966 as well as optional protocol to the Covenant on Civil and Political Rights. Article 2 of the optional protocol to the International Covenant on Civil and Political Rights provides that individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

(f) Interpretation or Saving Provisions (Article 46 and 47). - Part V comprising of Article 46 and 47 deals with interpretation or, saving provision. For example, Article 46 provides that nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the Constitutions of the Specialized Agencies which define the respective responsibilities of the various organs of the United Nations and the Specialized Agencies in regard to the matter dealt with in the present Charter. Article 47 further provides that nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

(g) Final or Concluding Provisions (Article 48 to 53). – Part VI (comprising of Articles 48 to 53) deals with final or concluding provisions. These provisions are relating to signature, ratification, accession, etc. of the Covenant by state parties coming into force of the Covenant, application, amendment to the Covenant, etc.

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97 See Article 42.
98 See Articles 1 of Optional Protocol to International Covenant on Civil and Political Rights, 1966.
100 See Article 48.
101 See Article 49.
102 See Article 50.
103 See Article 51.
3.4.1. Optional Protocol to the International Covenant on Civil and Political Rights, 1966

The preamble of the Protocol further provides that in order to achieve the purposes of the Covenant on Civil and Political Rights and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in Part IV of the Covenant to receive and consider as provided in the present Protocol, communications from individual, claiming to be the victims of violations of any of the rights set forth in the Covenant have agreed to the provisions of the Optional Protocol.

Article I of the Optional Protocol Provides that a State Party to the Covenant that becomes a party to the present Protocol recognizes competence of the Committee to receive and consider communication from individuals subject to its jurisdiction who claim to be the victims of violation by that State Party of any rights set forth in the Covenant. No Communication shall be received by the Committee if it concerns a State Party to the Covenant who is not a party to the Optional Protocol.

3.4.2. Second Optional Protocol to the International Covenant on Civil and Political Rights 1989:

The Second Optional Protocol was adopted on 15th December, 1989 and entered into force on July 11, 1991. Article 1 of the Second Protocol provides that no one within the jurisdiction of a State Party to the present Protocol shall be executed. Each State Party shall take all necessary steps to abolish death penalty within its jurisdiction. Article 6 further provides that the provisions of the present Protocol shall apply as additional provisions to the Covenant.


Besides preamble, the International Covenant on Economic, Social and Cultural Rights comprises of 31 Articles divided into five parts. For the sake of convenience of this study the provisions of the Covenant may be divided into the following heads:
(a) Preamble,  
(b) General (Article 1 to 5),  
(c) Substantive Rights (Article 6 to 15),  
(d) Measures for implementation (Article 16 to 25),  
(e) Final or Concluding Provisions (Articles 26 to 31).  

(a) Preamble. – The Preamble of the Covenant on Economic, Social and Cultural Rights, 1966, is almost same as the preamble of the Covenant on Civil and Political Rights which has been referred earlier. The reason of this similarity is that common source for both the Covenants are U.N. Charter provisions and Universal Declaration of Human Rights, 1948.

(b) General (Article 1 to 5). – Articles 1, 3 and 5 of the Covenant on Economic, Social and Cultural Rights, 1966, are also similar to Article 1, 3 and 5 of the Covenant on Civil and Political Rights with the only difference in that Article 3 speaks of the enjoyment of all economic, Social and Cultural Rights in place of Civil and Political rights. Article 2 of the Covenant on Economic, Social and Cultural Rights, 1966 (hereinafter to be referred as the “Economic Covenant”) provides the following:  

(1) Each State Party to the present Covenant undertakes to take steps, individually and through internal assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

(2) The State parties to the present Covenant undertakes to guarantee that the rights enunciated in the present Covenant will be exercised with discrimination of any kinds as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(3) Developing countries with due regard to Human Rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.
Through Article 4 of the Economic Covenant, the State parties to the Covenant recognized that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, they may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

The obvious reason for the difference in the contents of the above Article is the difference in the nature of the rights of both the Covenants and because economic, Social and Cultural Rights are by their nature more vague as compared to Civil and Political rights.

(c) **Substantive Economic, Social and Cultural Rights** (Articles 6 to 15). Part III of the Economic Covenant comprising of Articles 6 to 15 deals with Economic, Social and Cultural Rights. They are:

(i) Right to work freely chosen\(^{104}\)

(ii) Right to the enjoyment of just and favourable conditions of work\(^{105}\)

(iii) Right to from trade unions and join the trade union of choice\(^{106}\)

(iv) Right to social security, including social insurance\(^{107}\)

(v) Right relating to family, motherhood, childhood and of young person to protection and assistance and the right of free consent to marriage\(^{108}\)

(vi) Right to adequate standard of living for himself and his family including adequate food, clothing and housing and to the continuous improvement of living conditions\(^{109}\)

(vii) Right to the enjoyment of the highest attainable standard of physical and mental health\(^{110}\)

(viii) Right to education-including compulsory and free primary education\(^{111}\)

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\(^{104}\) Article 6
\(^{105}\) Article 7
\(^{106}\) Article 8
\(^{107}\) Article 9
\(^{108}\) Article 10
\(^{109}\) Article 11
\(^{110}\) Article 12
\(^{111}\) Article 13
(ix) Undertaking to implement the principle of compulsory education free of charge of all within a reasonable number of years^{112} and

(x) Right to (i) take part in cultural life; (ii) enjoy the benefits of scientific, progress and its applications; and (iii) benefits from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author^{113}.

(d) **Measures for Implementation** – State parties to the Covenant have an obligation to submit to the Secretary-General of the U.N. reports on the measures which they have adopted and the progress made. The Secretary-General shall then transit copies of report to the Economic and Social Council^{114}. The Economic and Social Council (ECOSOC) may transmit the reports to the Commission on Human Rights for study and general recommendations^{115}. The ECOSOC may submit from time to time to the General Assembly reports with recommendation of general nature and a summary of the information received from the State parties to the present Covenant and the specialized agencies in the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant. The state parties to the Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of Conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the governments concerned^{116}.

A perusal of the above measures shows they are weak, rather much weaker than their counterparts in the Civil and Political fields. The obvious reasons lie in the inherent nature of economic, Social and Cultural Rights. The development of such rights depends upon so many factors. It may differ from region to region and from country to country. It is not possible to prescribe strong measures for the implementation of such rights nor is it possible to prescribe a time-bound programme for the achievement of these rights.

^{112} Article 14
^{113} Article 15
^{114} Article 16.
^{115} Article 19.
^{116} Article 21.
(e) **Final or Concluding Provisions** (Article 26 to 31). – Part V of the Economic Covenant (comprising of Article 26 to 31) deals with final or concluding Article. It deals with provisions, such as, signature, ratification, accession (Article 26), entry into force (Article 27), application (Article 28), amendments (Article 29) and authentic language of the Covenant (Article 31).

**Relationship between the Two Covenants.** – There is a close relationship between the two Covenants because for both the Covenants the key source of rights is the Universal Declaration of Human Rights. The preambles of both the Covenants are the same so is the case with Article 1, 3 and 5. The preamble of the civil Covenant recognizes the need for creation of conditions wherein everyone may enjoys “his civil and political rights as well as his economic, Social and Cultural Rights”. The preamble of the Economic Covenant also recognise the same need so that everyone may enjoy “his economic, Social and Cultural Rights, as well as his Civil and Political rights”. Thus they are complimentary to each other. Human Rights and Fundamental Freedoms are indivisible. The realisation of Civil and Political rights is impossible without the enjoyment of economic, Social and Cultural Rights. This relationship between the Civil and Political rights and Social and Cultural Rights contained in the Civil Covenant and the Economic Covenant respectively was recognized by the International Conference on Human Rights which was held from April 22 to May 13, 1968 at Tehran in connection with the observance of the International year for Human Rights, Which marked the twentieth anniversary of the Universal Declaration of Human Rights. The conference was attended by 84 States. The realization of this relationship and their interdependence was reiterated by the General Assembly in a resolution in 1977.117 This was finally affirmed by the second World conference on Human Rights held at Vienna from June 14 to 25, 1993. It was in the agenda of the conference to consider the relationship between development, democracy and universal enjoyment of all Human Rights, keeping in view the interrelationship and indivisibility of economic, social, cultural, Civil and Political rights118. The Vienna Declaration adopted in the conference affirmed that all Human Rights are universal, indivisible, interdependent and interrelated. The international community must treat

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Human Rights globally in a fair and equal manner, on the same footing and with the same emphasis. While the significance of the national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it was the duty of States regardless of their political, economic and cultural systems to promote and protect all Human Rights\textsuperscript{119}. Further, democracy, development, and respect for Human Rights are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their political, economic, social and cultural systems, and their full participation in all aspects of their lives\textsuperscript{120}.


Adoption of the International Covenant on Human Rights and of the optional Protocol in December, 1966 and their entry into force on 23\textsuperscript{rd} March, 1976 and the establishment of the Human Rights Committee represented the successful outcome of the long and persistent effort by the United Nations to translate the lofty aims and principles of the universal Declaration of Human Rights into binding instruments of International Law\textsuperscript{121}. There is not even a shade of doubt that the two Covenants have legal force as treaties for the parties to them and institute a detailed codification of Human Rights\textsuperscript{122}.

The two International Covenants on Human Rights have come for sharp criticism by various authors. It is pointed out, by their very nature, the Human Rights cannot be universal for they differ from region to region and from State to State in view of the economic, social and political conditions of the people. Though there is much force in the criticism, yet it cannot but be noted that there is nothing which prevents the States of different regions to adopt Regional Conventions on Human Rights, such as, Europeans Conventions on Human Rights, American Convention on Human Rights, African Charter on Human and Peoples Rights and Arab Commission on Human Rights and which especially the European Convention on Human Rights have proved to be greatly successful. But even for such Conventions there must be

\textsuperscript{119} U.N. Chronicle, Vol XXX, No. 3 (September, 1993), p. 56.
\textsuperscript{120} Ibid, at p; 57.
\textsuperscript{122} See also lan Brownlie, principles of International Law, Second Edn. (1993), p. 555.
universal or international standard or yardstick. It is here particularly the International Bill of Human Rights has rendered a signal service for promotion in respect for Human Rights and protection thereof.

It is also pointed out that though the two Covenants on Human Rights seek to lay down universal Human Rights, although they have not yet become universal. This criticism lacks any force and has nothing to commend itself. Rather credit must be given to the United Nations Organisation for the pains taken to draft International Bill of Human Rights within a period of two decades since when the two Covenants came into force, they have been ratified by most of the States – The civil Covenant has been ratified by 140 States parties whereas the Economic Covenant by 138 States. That is to say that more than 75% of the states have already signed the two Covenants. The way progress in this connection is being made envisages that they will become universal in a near future. Moreover, it cannot be forgotten that Universal Declaration of Human Rights, 1948, which is a constituent of the International Bill of Human Rights, has become universal.

The two Covenants are sometimes criticized for omission of certain rights such as those relating to property and the right of everyone to seek and enjoy in other countries asylum from persecution etc. This criticism ignores the existence of different ideologies and policies of the governments of different States. Moreover, it cannot be forgotten that in universal treaties like the two Covenants, can be incorporated which are generally acceptable to all the state parties. Even though there is a device of making reservations yet experience has shown that too many reservations, as it happened in case of Convention on the Prevention and Punishment of the Crime of Genocide 1951, may destroy the purpose and objective of the Convention.

As regards the criticism that the two Covenants have not become universal and are binding only on the state parties who have ratified them, has been aptly observed, “The fact that the Covenants came into force only in respect of the parties ratifying them or procedures of enforcement are optional, should not make us under-estimate the great significance of these Covenants and the procedures of their implementations as they were giant steps in the expansion of International jurisdiction at the cost of the
domestic jurisdiction of States. These great steps were made against the sharp opposition of some States on the ground that the proposed measures of implementation would constitute “intervention” in the domestic jurisdiction of the member States. But overwhelming majorities repeatedly overruled such objections and even suggested some amendments seeking to delete from the draft Covenant, the provision objected to by the minority123.”

The International Covenants on Human Rights are generally based on the Universal Declaration, a case can be made for their provisions being authoritative interpretation of the Charter even for non-parties to the Covenants in so for as they incorporate the Rights proclaimed in the Universal Declaration. As pointed out by Ian Brownlie, “The Universal Declaration of Human Rights has been regarded as a preliminary step towards more elaborate formulation of standards in relation to Human Rights instruments which would have undoubted legal force as treaties for non-parties to them”. The nature of the subject matter is such that even for non-parties the concept of the Covenant represents authoritative evidence of the content of the concept of Human Rights as it appears in the Charter of the United Nations124.”

Corbett has observed that “in the field of Human Rights the twenty years’ drive to convert the Universal Declaration into binding Conventions has ended in the weak compromises of the two draft Conventions adopted by the General Assembly of the United Nations in 1966. A less coercive order for this sensitive area of sovereignty could hardly have been contained. Yet so vary are governments of external interference in their relations with their nationals that in the 3 years in which those Covenants have been awaiting ratifications (1969) only 6 States have deposited their instruments of acceptance. The record has its uses as a gauge of official attitudes towards super national authority125. Although the international Covenants came into force in 1976 and by the end of 1998 the civil Covenant had as many as 140 parties and the Economic Covenant had 138 parties (i.e. at average of more than 4 ratifications per year), there is still some force in the observation of Corbett in respect

of the attitude of States towards super national authority. In the view of another eminent author, “The Covenants particularly the Covenant on Civil and Political Rights, fall short of the expectations of the early years of the United Nations so far their substantive provisions are concerned. The measures of implementation of the civil Covenant are considerably weaker than those the originators of the project had in mind and, with one exception (the right of petition set forth in the protocol) also weaker than the proposals submitted to the General Assembly through the economic and social Commission by the Commission on Human Rights in 1954. They embody the maximum what governments were prepared to agree to in 1966. There is no reason to assume that they would accept more today”

Thus instead of making a futile exercise in attempting to persuade States to agree to incorporate stronger implementation measures, efforts should be made to persuade more and more States to become parties to the International Covenants and optional protocol on Human Rights. It may also be noted here that a formidable hurdle in the proper implementation of the Covenants on Human Rights is that even those States which have signed and ratified these, have not specifically adopted them through their Legislature for application in the International or State field. This problem has been highlighted by the supreme court of India in Jolly George Varghese vs. The Bank of Cochin by observing “the basic Human Rights enshrined in the international Covenants may at best inform judicial institutions and inspire legislative action at the instance of the aggrieved individual is beyond the area of judicial authority. The positive commitments of the State Parties ignites legislative action at home but does not automatically make the Covenant an enforceable part of the corpus of India.” However, the Supreme Court has made it clear that as far as the Constitution containing fundamental rights, they can be enforced. The International Covenants on Human Rights have greatly influenced the development of Human Rights jurisprudence.

127 AIR 1980 SC 470, 474.
3.7. Regional Protection of Human Rights

The concept of Regional protection of Human Rights or Regional Conventions on Human Rights can be explained with reference to the following heads:


The statute of the Council of Europe, established by the Congress of Europe consisting of members were likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law’, stressed that the maintenance and promotion of Human Rights were one of the means to achieve the ultimate objective of European unity. The negotiation within the council led to the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on November 4, 1950. The Convention was signed by the members of the Council. It came into force on September 3, 1953. The Convention has been ratified by twenty-two States.

Rights and Freedoms Recognized under ECHR. – Under Article 1 of the Convention the state parties to the Convention undertake to secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of the Convention. Thereafter Section 1 enlists and defines the following rights and freedoms:-

(1) Right to life

(2) Freedom from torture or in human or degrading treatment or punishment

\[128\] Article 2
(3) Freedom from slavery or servitude\textsuperscript{130}.

(4) Freedom from forced or compulsory labour\textsuperscript{131}.

(5) Right to liberty and security of person\textsuperscript{132} including right of arrested person to be informed of the reasons of his arrest and of any charge against him to be brought before a judge and to be entitled to trial within reasonable time and right of victims of arrested or detention in contravention of the provisions of his article to an enforceable right to compensation\textsuperscript{133}.

(6) Right to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law\textsuperscript{134} including presumption of innocence of a person charged with a criminal offence until proved guilty according to law\textsuperscript{135} and certain specified minimum rights of everyone charged with a criminal offence\textsuperscript{136}.

(7) Non-retroactive application of criminal law under national or international law\textsuperscript{137}.

(8) Right to respect for private and family life, home and correspondence\textsuperscript{138}.

(9) Right to freedom of thought, conscience and religion including freedom to change religion or belief, and freedom either alone or in community with others and public or private, to manifest religion or belief, in worship, teaching, practice and observance subject only, to the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others\textsuperscript{139}.

(10) Right to freedom of expression including freedom to hold opinions and to receive and impart information and ideals.
without interference by public authority and regardless of frontier\textsuperscript{140}.

(11) Right to freedom of peaceful Assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interest\textsuperscript{141}.

(12) Right of men and women of marriageable age to marry and to found a family, according to the national laws governing the exercise of this right\textsuperscript{142}.

(13) Right to have an effective remedy before a national authority against violations of rights and freedoms set forth in this Convention\textsuperscript{143}.

(14) Right of every natural or legal person to the peaceful enjoyment of his possessions\textsuperscript{144}.

(15) Right to education\textsuperscript{145}.

(16) Right to have free elections at reasonable intervals by secret ballot conditions which will ensure the free expression of the opinion of the people in the choice of the legislature\textsuperscript{146}.

(17) Right not to be expelled from a State of which a person is a national\textsuperscript{147}.

(18) Freedom from collective expulsion from a State\textsuperscript{148}.

(19) Abolition of death penalty\textsuperscript{149}.

(20) Right of review of a conviction by a higher court\textsuperscript{150}.

It is clear from the above that the European Convention (ECHR) contains only Civil and Political Rights.

\textsuperscript{140} Article 10 para 1.
\textsuperscript{141} Article 11, para 1.
\textsuperscript{142} Article 12.
\textsuperscript{143} Article 13.
\textsuperscript{144} Article 1, Protocol 1.
\textsuperscript{145} Article 2, Protocol 1.
\textsuperscript{146} Article 3, Protocol 1.
\textsuperscript{147} Article 3, Protocol IV.
\textsuperscript{148} Article 4, Protocol IV
\textsuperscript{149} Article 7, Protocol VI.
\textsuperscript{150} Article 2, Protocol VII.
3.7.2. European Social Charter, 1961

The European Social Charter was signed at Turin on October 18, 1961, and came into force on February 26, 1965. It was adopted by the council of Europe with a view to develop and protect social and economic rights and to achieve greater unity of its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage.

The Charter contains a number of Social and Economic Rights in Part I which are as follows:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association.
6. All workers and employers have the right to bargain collectively.
7. Children and young persons have right to special protection against the physical and moral hazards to which they are exposed.
8. Employed women, in case of maternity, and other employed women as appropriate, have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance.
10. Everyone has the right to appropriate facilities for vocational training.
11. Everyone has the right to benefit from any measures enabling him to enjoy the higher possible standard of health attainable.
12. All workers and their dependants have the right to social security.
13. Anyone without adequate resources has the right to social and medical assistance.
14. Everyone has the right to benefit from social welfare services.
15. Disabled persons have the right to vocational training, rehabilitation and resettlement.
16. The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.

17. Mothers and children have the right to appropriate social and economic protection.

18. The nationals of any one of the Contracting Parties have the right to engage in any gainful occupation in the territory of any one of the others on a footing of equality with the nationals of the latter.

19. Migrant workers have the right to protection and assistance in the territory of any other Contracting Party.

The above rights are not binding on the contracting Parties. They accept these rights only as the aim of their policy, to be pursued by all appropriate means, both national and international in character’, and the attainment of conditions, in which they may be effectively realised. However, each of the contracting parties undertakes to consider themselves bound by certain rights, viz., right to work, right to organize, right to bargain collectively, right to social security, right to social and medical assistance, right of the family to social, legal and economic protection and the right of Migrant workers and their families to protection and assistance. In addition to the above, parties may consider themselves bound by other rights as well if selected.

3.7.3. European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment 1987

Article 5 of the Universal Declaration of Human Rights Provided:

“No one shall be subjected to Torture or to Cruel, Inhuman or Degrading treatment or punishment.”

In order to implement the above provision, European countries adopted European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). It was signed at Strasbourg on 26 November, 1987. The main provision of this Convention are following:
(1) **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** – Article 1 of the Convention provides for the establishment of a European committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary the protection of such persons from inhuman or degrading treatment or punishment.

(2) **State Parties to Permit Visits of Committee** – According to Article 2, each party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

(3) **Cooperation between Committee and National Authorities** - In the application of this Convention, the committee and the competent national authorities of the party concerned shall cooperate with each other.\(^{151}\)

(4) **Constitution of Committee** - The committee consists of a number of members equal to that of Parties. The members shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the committee effectively.\(^{152}\)

(5) **Visits of the Committee** - The committee shall organise visits to places referred to in Article 2 apart from periodic visits, the committee may organise such other visits as appear to it to be required in the circumstances.

(6) **Competent authorities of party concerned to make representation to the Committee in Exceptional circumstances** - In exceptional circumstances, the competent authorities of the party concerned may make representation to the committee against a visit at the time or to the particular place proposed by the committee. Such representation may only be made on ground national defence, public safety, serious disorders in places where persons are deprived of their liberty, the

\(^{151}\) Article 3
\(^{152}\) Article 4
medical condition of a person or that an urgent interrogation relating to serious crime is in progress\textsuperscript{153}.

(7) **Committee to draw a Report** - After each visit, the committee shall draw a report on the facts found during the visits. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

(8) **Information to be gathered to be confidential** - The information gathered by the committee in relation to visit, its report and its consultations with the party concerned shall be confidential\textsuperscript{154}.

(9) **Committee to Submit Annual general report to the Committee of Ministers** - Subject to the rules of confidentiality in Article 11, the committee shall, every year, submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Committee and made public\textsuperscript{155}.

Subsequently, two protocols to the above Convention were also adopted.

### 3.7.3 (a) First Protocol to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment:

By Article 1 of the First Protocol (1993), a sub-paragraph shall be added to Article 5, paragraph 1, of the Convention as follows:

“Where a member to be elected to the committee in respect of a non-member State of the Council of Europe, the Bureau of the Consultative Assembly shall invite the parliament of that state to put forward three candidates of whom two at least shall be its nationals. The election by the committee of ministers shall take place after consultation with the party concerned”.

\textsuperscript{153} Article 9  
\textsuperscript{154} Article 11  
\textsuperscript{155} Article 12
Article 2 of the First Protocol provided that Article 12 of the Convention shall read as follows:

“Subject to the rules of confidentiality in Article 11, the committee shall every year submit to the committee of Ministers a general report on the activities which shall be transmitted to the Consultative Assembly and to any non-member State of the council of Europe which is a party to the Convention, and made public.”

Further, Article 3 of the First Protocol provides:

“1. The text of Article 18 of the Convention shall become paragraph 1 of that article and shall be supplemented by the following second paragraph”

“2. The Committee of Ministers of the Council of Europe may invite any member state of the council of Europe to accede to the Convention.”

3.7.3 (b) Second Protocol to European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1993.

Article 1 of the Second Protocol provides that in Article 5, paragraph 3 the second sentence shall read as follows:

“They may be re-elected twice.”

Further, Article 5 of the Convention shall be supplemented by the following paragraphs 4 and 5:

“4. In order to ensure that, as far as possible, one half of the membership of the committee shall be renewed every two years, the committee of Ministers may decide before proceeding to any subsequent election that term or terms of office of one or more members to be elected shall be for a period other than four years but not more than six and not less than two years.

5. In cases where more than one term of office is involved, the Committee of Ministers applies the preceding paragraph, the allocation of terms of office shall be effected by the drawing of lots by the Secretary-General, immediately after the election.”


Rights recognized under the Convention. – The American Convention on Human Rights, 1969 guarantees the following Civil and Political rights:

(1) The right to juridical personality\textsuperscript{156}.
(2) The right to life\textsuperscript{157}.
(3) The right to human treatment\textsuperscript{158}.
(4) Freedom from slavery and involuntary servitude\textsuperscript{159}.
(5) Right to personal liberty\textsuperscript{160}.
(6) Right to fair trial\textsuperscript{161}.
(7) Freedom from ex post facto laws\textsuperscript{162}.
(8) The right to compensation for miscarriage of justice\textsuperscript{163}.
(9) The right to privacy\textsuperscript{164}.
(10) Freedom from conscience and religion\textsuperscript{165}.
(11) Freedom of thought and expression\textsuperscript{166}.
(12) The right of reply\textsuperscript{167}.
(13) The right of Assembly\textsuperscript{168}.
(14) Freedom of association\textsuperscript{169}.
(15) The right of family\textsuperscript{170}.

\textsuperscript{156} Article 3
\textsuperscript{157} Article 4
\textsuperscript{158} Article 5
\textsuperscript{159} Article 6
\textsuperscript{160} Article 7
\textsuperscript{161} Article 8
\textsuperscript{162} Article 9
\textsuperscript{163} Article 10
\textsuperscript{164} Article 11
\textsuperscript{165} Article 12
\textsuperscript{166} Article 13
\textsuperscript{167} Article 14
\textsuperscript{168} Article 15
\textsuperscript{169} Article 16
\textsuperscript{170} Article 16
(16) The right to name\textsuperscript{171}.
(17) Rights of child\textsuperscript{172}.
(18) The right to nationality\textsuperscript{173}.
(19) The right to property\textsuperscript{174}.
(20) Freedom of movement and residence\textsuperscript{175}.
(21) Right to participate in government\textsuperscript{176}.
(22) The right of equal protection before law\textsuperscript{177}.
(23) The right of judicial protection\textsuperscript{178}.

3.7.4 (a) Additional Protocol to the American Convention on Human Rights in the areas of Economic, Social and Cultural Rights or “Protocol of San Salvador” 1988

According to American Convention on Human Rights (1969), any State party or Commission may propose a protocol in the General Assembly for the consideration of State parties so as to include it slowly and gradually other rights and freedoms in the system. In the preamble of this Additional Protocol, State parties reaffirm their intention to consolidate in the American hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man. The state parties to the Additional Protocol recognized that the essential rights of man are not derived from one’s being a national of a certain State, but are based upon attributes of human person, for which they merit international protection in the form of a Convention reinforcing or complementing the protection provided by the domestic law of American States. Further, bearing in mind, although fundamental economic, Social and Cultural Rights have been recognized in earlier international instruments of both world and regional scope, it is essential that rights be reaffirmed, developed, perfected and protected in order to consolidate in America, on the basis of full respect for the rights of the individual, the democratic

\textsuperscript{170} Article 17
\textsuperscript{171} Article 18
\textsuperscript{172} Article 19
\textsuperscript{173} Article 20
\textsuperscript{174} Article 21
\textsuperscript{175} Article 22
\textsuperscript{176} Article 23
\textsuperscript{177} Article 24
\textsuperscript{178} Article 25
representative form of government as well as the right of its peoples to development, self determination, and the free disposal of their wealth and natural resources. Finally, considering that the American Convention on Human Rights provides that draft Additional Protocol to this Convention which may be submitted for consideration to the State parties, meeting together on the occasion of the General Assembly of the organisation of American States, for the purpose of progressively incorporating other rights and freedoms into the protective system thereof. State Parties adopted the Additional Protocol to the American Convention on Human Rights also known as ‘protocol to the American Convention on Human Rights also known as ‘Protocol of San Salvador’.

The main provisions of the Additional Protocol are following:

(1) **Obligation to adopt Measures** – The State parties to his Additional Protocol to the American Convention on Human Rights undertake to adopt the necessary measures, both domestically and through international cooperation, especially economic and technical, to the extent allowed by their resources and taking account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the rights recognized in this protocol\(^{179}\).

(2) **Obligation to Enact Domestic Legislation** – If the exercise of the rights set forth in this protocol is not already guaranteed by legislative or other provisions, the State parties undertake to adopt, in accordance with their Constitutional processes and the provision of this protocol, such legislative or other measures as may be necessary to make those rights a reality\(^{180}\).

(3) **Obligation of Non-Discrimination** – The State parties to this protocol undertake to guarantee exercise of the rights set forth herein without discrimination of any kind for reasons related to race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

\(^{179}\) Article 1
\(^{180}\) Article 2
Rights mentioned or Incorporated in the protocol

(1) **Right to work.** – Everyone has the right to work, which includes the opportunity to secure the means of living a dignified and decent existence by performing a freely elect or accepted lawful activity\(^{181}\).

(2) **Trade Union Rights.** – The State parties shall ensure:

(a) The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As the extension of that right the State parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form International trade union organizations and to affiliate with them of their choice. The State Parties shall also permit trade unions, federations and confederations to function freely.

(b) No one may be compelled to belong to a trade union\(^{182}\).

(3) **Right to Social Security** – Everyone shall have the right to social security protecting him from the consequence of old-age and of disparity which prevents him physically or mentally from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents\(^{183}\).

(4) **Right to Health** - Everyone shall have the right to health, Right to understand the environment of the highest level of physical, mental and social well-being\(^{184}\).

(5) **Right to Healthy Environment** - Everyone has the right to live in a healthy environment and to have access to basic public services. Further, the state parties shall promote the protection, preservation and improvement of the environment\(^{185}\).

(6) **Right to Food** – Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. In order to promote the exercise of this right and eradicate malnutrition, state parties undertake to improve methods of

\(^{181}\) Article 6
\(^{182}\) Article 8
\(^{183}\) Article 9
\(^{184}\) Article 10
\(^{185}\) Article 11
production, supply and distribution of food, and to this end, agree to promote
greater international cooperation in support of relevant national policies.

(7) **Right to Education**- Everyone has the right to education. The state parties to
this protocol recognize that in order to achieve the full exercise of right to
education:

(a) Primary education should be compulsory and accessible to all without cost;
(b) Secondary education in its different forms, including technical and
vocational secondary education, should be made generally available and
accessible to all by every appropriate means, and in particular, by the
progressive introduction of free education;
(c) Higher education should be made equally accessible to all, on the basis of
individual capacity, by every appropriate means, in particular, by the
progressive introduction of free education.
(d) Basic education should be encouraged or intensified as far as possible for
those persons who have not recessed or completed the whole cycle of primary
education.
(e) Programmes of special education should be established for the
handicapped, so as to provide special instruction and training to persons with
physical disabilities or mental deficiencies\(^\text{186}\).

(8) **Right to Benefits of culture** - The state parties to this protocol recognize the
right of everyone:

(a) To take part in the cultural and artistic life of the community;
(b) To enjoy the benefits of scientific and technological progress;
(c) To benefit from the protection of moral and material interests deriving
from any scientific, literary or artistic production of which he is the author\(^\text{187}\).

(9) **Right to the Formation and the Protection of Families** - Everyone has the
right to form a family, which shall be exercised in accordance with the
provisions of the pertinent domestic legislation\(^\text{188}\).

(10) **Rights of Children** - Every child, whatever his parentage, has the right to
protection that his status as a minor requires from his family, society and the

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\(^{186}\) Article 13
\(^{187}\) Article 14
\(^{188}\) Article 15
State. Every child has the right to grow under the protection and responsibility of his parents; save in exceptional, judicially recognized circumstances; a child of young age ought not to be separated from the mother. Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at highest levels of the educational system\textsuperscript{189}.

11 (11) **Protection of the Elderly** - Everyone has the right to special protection in old age\textsuperscript{190}.

12 (12) **Protection of the Handicapped** - Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality\textsuperscript{191}.

**Means of Protection:** Article 19 of the Additional Protocol provides that the State parties to this protocol undertake to submit periodic reports on the progressive measures they have taken to ensure respect for the rights set forth in this Protocol. Further all reports shall be submitted to the Secretary-General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council of Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary-General shall send a copy of such reports to the Inter-American Commission on Human Rights.

The Inter-American Commission on Human Rights may formulate such observation and recommendation as it deems pertinent concerning the status of the economic, Social and Cultural Rights established in the Present Protocol, in all or some of the State Parties, which it may include in its Annual Report to the General Assembly or in a Special Report, whichever it considers appropriate.

3.7.4 (b) **Protocol to the American Convention on Human Rights to Abolish Death Penalty 1990**

Article 1 of this Protocol provides that the State Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction; Article 2 further provides that no reservation may be made to this Protocol. However, at the time of ratification or accession, the State Parties to this instrument may declare

\textsuperscript{189} Article 16
\textsuperscript{190} Article 17
\textsuperscript{191} Article 18
that they reserve their right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.

3.7.4 (c) Inter-American Convention to Prevent and Punish Torture, 1985.

Under Article 1 of the Convention, the State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

Article 2 of the Convention defines “torture” as “any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for the purpose of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose, Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. However, the concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures provided that they do not include the performance of the acts or use of the methods referred to in this article.

Persons to be held guilty of the crime of torture: According to Article 3 of the Convention the following shall be guilty of the crime of torture:

(a) A public servant or an employee, who acting in that capacity, orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so,
(b) A person, who at the instigation of a public servant or an employee mentioned in sub-paragraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

No Exemption for the plea of orders of a superior: Article 4 provides that the fact of having acted under orders of a superior shall not provide exemption from the cases pending criminal liability.
Other grounds not be invoked as justification of the crime of torture: According to Article 5, the existence of circumstances such as a state of War, threat of War, state of siege or of emergency, domestic disturbance or strife, suspension of Constitutional guarantee, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture. Further, neither the dangerous character of the detainee or prisoner nor the lack of security in the prison establishment or penitentiary shall justify torture.

Obligation of State Parties to take effective Measures: In accordance with the terms of Article 1, the State Parties shall take effective measures to prevent and punish torture within their jurisdiction\(^\text{192}\).

Further, the State Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case\(^\text{193}\).

Compensation for victims of Torture:

The State Parties undertake to incorporate into their national laws, regulations, guaranteeing suitable compensation for victims of torture\(^\text{194}\).

Extradition for persons Accused of having committed the crime of torture
- The State Parties shall take necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for Commission of that crime, in accordance with their respective national laws on extradition and their international commitments on this matter\(^\text{195}\).

Necessary steps to Establish Jurisdiction. - Article 12 of the Convention provides that every State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention in the following cases:

\(^{192}\) Article 6  
\(^{193}\) Article 8  
\(^{194}\) Article 9  
\(^{195}\) Article 11
(a) When torture has been committed within its jurisdiction;
(b) When the alleged criminal is a national of that state; or
(c) When the victim is a national of that state and it so deems appropriate.

Every state party shall also take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with Article 11\textsuperscript{196}.

**Crime of Torture deemed to be included in Extradition Treaty:** The crime of extradition shall be deemed to be included among the extraditable crime in every extradition treaty entered into between State Parties. The State Parties undertake to include the crime of torture as an extraditable offence in every extradition treaty concluded between them\textsuperscript{197}.

When a State Party does not grant the extradition, the case ought to be submitted to its competent authorities as of the crime had been committed within its jurisdiction for the purposes of investigation and when appropriate, for criminal action in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that has requested the extradition\textsuperscript{198}.

**3.7.5. African Charter on Human and People’s Rights, 1981:**

The African Charter, also known as Banjul Charter, was adopted on June 27, 1981 and entered into force October 21, 1986. The Charter has been ratified or acceded to by 49 States out of the 50 members of the Organisation of African Unity (OAU). Sahrawi Arab Democratic is the only state which has not become a party to the Charter.

\textsuperscript{196} Article 12
\textsuperscript{197} Article 13
\textsuperscript{198} Article 14
The part I of the Charter stipulates the rights and duties of the individuals. Chapter-I lays down the rights, Chapter-II lays down the duties of the individuals. Following are the rights of the people.

1. Equality before the law\(^{199}\).
2. Right to respect for his life and the integrity of his person\(^{200}\).
3. Right to the respect of the dignity inherent in a human being and the recognition of his legal status\(^{201}\).
4. Right to liberty and to the security of his person\(^{202}\).
5. Right to have his cause heard. This comprises (a) right to an appeal to competent National organs against acts of violating his fundamental rights; (b) right to be presumed innocent until the guilty is proved; (c) right to defence, and (d) the right to be tried within a reasonable time by an impartial court or tribunal\(^{203}\).
6. Freedom of conscience, the profession and free practice of religion\(^{204}\).
7. Right to receive information\(^{205}\).
8. Right to free association\(^{206}\).
9. Right to assemble freely with others\(^{207}\).
10. Right to freedom of movement and residence\(^{208}\).
11. Right to participate freely in the government of his country\(^{209}\).
12. Right to property\(^{210}\).
13. Right to work under equitable and satisfactory conditions\(^{211}\).
14. Right to enjoy the state of physical and mental health\(^{212}\).
15. Right to education\(^{213}\).
16. The family shall be the natural unit and basis of society\(^{214}\).
17. Right to equality\textsuperscript{215}.
18. Right to existence\textsuperscript{216}.
19. Right to dispose wealth and natural resources\textsuperscript{217}.
20. Right to economic, social and cultural development\textsuperscript{218}.
21. Right to national and International Peace and Security\textsuperscript{219}.
22. Right to a general satisfactory environment\textsuperscript{220}.

State parties to the Charter shall have the duty to promote and ensure through teaching, education and publication in respect of the above rights and freedoms. They shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institution entrusted with the promotion and protection of the above rights and freedoms.

The Charter under chapter II deals with the duties of the individuals of the contracting parties which are as follows:

(1) Duty towards his family and society, the State and other legally recognised communities and international communities\textsuperscript{221}.
(2) Duty to respect and consider his fellow beings without discrimination and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance\textsuperscript{222}.
(3) Duty to preserve the harmonies development of the family and to work for the cohesion and respect of the family, to respect his parents at all times, to maintain them in case of need\textsuperscript{223}.
(4) Duty to serve his national community\textsuperscript{224}.
(5) Duty not to compromise the security of the state whose national or resident he is.

\textsuperscript{214} Article 18
\textsuperscript{215} Article 19
\textsuperscript{216} Article 20
\textsuperscript{217} Article 21
\textsuperscript{218} Article 22
\textsuperscript{219} Article 23
\textsuperscript{220} Article 24
\textsuperscript{221} (Article 27 Para 1).
\textsuperscript{222} Article 28.
\textsuperscript{223} Article 29.
\textsuperscript{224} Ibid.
(6) Duty to preserve and strengthen social and national security.

(7) Duty to preserve and strengthen the national independence and the territorial integrity of his country.

(8) Duty to work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society.

(9) Duty to preserve and strengthen positive culture values in his relations with other members of the society.

(10) Duty to contribute at all times to the promotion and achievement of African unity.

In addition to the above Human Rights Instruments, there are some other instruments for the protection of Human Rights.

3.8. International Conventions on Human Rights

There are various other International legally binding Conventions on Human Rights in different fields. The most significant among them are:

1. Slavery Convention, 1926
2. Protocol amending the Slavery Convention 1953
3. Supplementary Convention on the abolition of Slavery, the Slavery Trade and Institutions and practices similar to slavery, 1956
4. Convention concerning Forced Labour 1930
6. The Convention on Status of Refugees, 1951

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225 Ibid
(ii) The Arab Commission on Human Rights
10. Convention Against Torture and other cruel inhuman or degrading treatment or punishment (1984)
11. Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (2002)

3.8.1. Slavery Convention, 1926

Under the auspices of the League of Nations the International Slavery Convention was adopted on September 25, 1926\textsuperscript{227} which defined the slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

Slave Trade was defined by the Convention of 1926 as includes acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged; and in general, every act of trade or transport in slaves.

According to Article 4 the high contracting parties shall give to one another, every assistance with the object of securing the abolition of slavery and the slave trade.

3.8.2. Protocol Amending the Slavery Convention 1953

In 1953, the Protocol amending the slavery Convention of September 25, 1926 was adopted which transferred to the United Nations functions and powers that had been undertaken by the League of Nations.\textsuperscript{228}

\textsuperscript{227} The convention came into force on March 7, 1927
\textsuperscript{228} The Protocol was approved by the General Assembly through a Resolution 794 (XVIII) of October 23, 1953
3.8.3. Supplementary Convention on the Abolition of Slavery, the Slavery Trade and Institutions and practices similar to slavery, 1956

A Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery was adopted by a Conference of Plenipotentiary convened by the Economic and Social Council, and opened for signature at Geneva on September 7, 1956\textsuperscript{229}. The Convention came into force on April 30, 1957. The Convention has 117 State Parties.

The Convention under Article 1 laid down that State Parties to the Convention shall take all practicable and necessary legislative and other measures for the complete abolition or abandonment of the (a) Debt bondage, that is to say, the status of condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined; (b) Serfdom, that is to say, the condition of status of a tenant who is by law, custom or agreement bound to live, and labour on land belonging to another person; (c) Any institution or practice whereby (i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) the husband of a woman or his family or his clan has the right to transfer her to another person for value received or otherwise; or (iii) a woman on the death of her husband is liable to be inherited by another person. (d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or his labour.

The Convention under section II made provision for the Slave Trade. Article 3 laid down that the act of conveying or attempting to convey slaves from one country to another by whatever means of transport shall be a criminal offence under the laws

\textsuperscript{229} Economic and Social Council Resolution 608 (xxi) of April 30, 1956.
of the State Parties and persons convicted thereof shall be liable to very severe penalties.

Section III of the Convention stated that in those States where the slavery has not been abolished or where the institutions or practices similar to slavery have not yet completed, the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status or as a punishment, or for any other reason, or of being accessory thereto, shall be criminal offence and persons convicted thereof shall be liable to punishment.

The State Parties undertook to co-operate with each other and with the United Nations to give effect to the provision of the Convention. Any dispute between the State Parties relating to the interpretation or application of the provisions shall be referred to the International Court of Justice at the request of any one of the parties to the dispute, unless the parties concerned agree on another mode of settlement.

3.8.4. Convention concerning Forced Labour 1930

The Convention concerning Forced Labour was adopted by the General Conference of the International Labour Organisation on June 25th 1957.

Under Article I, the convention provided that each member of the International Labour Organisation who ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour.

(a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(b) As a method of mobilising and using labour for purposes of economic development;

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230 Article 5
231 Article 8
232 Article 10.
234 Convention No. 105.
(c) As a means of labour discipline
(d) As a punishment for having participated in strikes;
(e) As a means of racial, social, natural or religious discrimination.

State Parties to the Convention undertake to take effective measures to secure the immediate and complete abolition of forced or compulsory labour.


Article I of the Genocide Convention 1948, provides that the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under International Law which they undertake to prevent and punish. Under Article III of the Convention the following acts are punishable: (a) Genocide; (b) Attempt to commit genocide; and (c) Direct and public incitement to commit genocide (d) Conspiracy to commit genocide and (e) Complicity in genocide. Article IV of the Convention provides that persons committing genocide or any of the other acts enumerated in article III shall be punished even though they are Constitutionally responsible rulers, public officials or private individuals.

Other main provisions of the Genocide Convention:

(i) The Contracting Parties of the Convention have undertaken to enact in accordance with their respective Constitution, the necessary legislation to give effect to the provisions of the Convention and in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article III.

(ii) Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction. It is unfortunate that the provision relating to

235 Article VI of the Convention
“International Penal Tribunal” to try persons for genocide, and for that matter any other international crime, has yet not been implemented although 44 years have passed since the adoption of the Genocide Convention.

(iii) Genocide and the other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition\textsuperscript{236}.

(iv) Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute\textsuperscript{237}.

3.8.6. The Convention on Status of Refugees, 1951

This Convention came into force on 22\textsuperscript{nd} April 1954. It is divided into VII Chapters and 46 Articles. Chapter I contains 11 Sections, about the general provisions. Chapter II containing 12 to 16 Articles, deals with the legal status of the refugees. Chapter III having Articles 17 to 19 relates to employments of profit of refugees. Chapter IV, containing Articles 20 to 24, mentions the provisions of the welfare of the refugees. Chapter V, extending from Articles 25 to 34, provides for administrative measures

For the relief of the refugees Chapter VI, containing Articles 36 to 37, relates to the administrative, executive and temporary provisions relating to the refugees, and Chapter VII, in sections 38 to 46 mentions the miscellaneous matters relating to the welfare and relief of refugees. At the end of the Convention, there is a Schedule which mentions different items in 16 paragraphs. This Schedule is a detailed account about the right of the refugees. The Refugees are protected against being repelled from the boundary of the country in which they have taken shelter to some other country. The Principle of non-refoulment is also included in the items of the Convention. The provisions of the Convention apply to all concerned without any

\textsuperscript{236} Article VII of the Convention
\textsuperscript{237} Article IX of the Convention
discrimination as to race, caste etc. Besides there are provisions for the registration and passport for travel in the Convention.


On December 21, 1965 General Assembly of U.N adopted International Convention on the Elimination of All forms of Racial Discrimination. It consists of 25 articles divided into three parts. This Convention aims at adopting all necessary measures for speedy elimination of racial discrimination in all its forms and manifestations and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an International Community free from all forms of racial segregation and racial discrimination.\(^{238}\) The Convention under Article 1, defines the term ‘racial discrimination’ by stating that racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Human Rights and Fundamental Freedoms in the political, economic, social, cultural or any other field of public life. The Convention shall not apply to distinction, exclusion, restrictions or preferences made by a State Party between citizens and non-citizens.

**Obligations of the States Parties**

The Convention under Article 2 laid down the obligations of the States Parties to eliminate the racial discrimination which are as follows:

1. They undertake not to engage in any act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

2. State Parties shall not sponsor, defend or support racial discrimination by any persons or organisations.

\(^{238}\) ICERD, 19666 preamble
(3) Each State Party shall take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

(4) Each Party shall prohibit and bring to an end by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organisation.

(5) In particular, the State Parties undertake to guarantee equality before the law in the enjoyment of Human Rights, notably the right of everyone to equal treatment before all organs of administering justice; the right of security of persons and protection by the State against violence or bodily harm; and the political, civil, economical, Social and Cultural Rights of every person.


On 18th December 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All forms of Discrimination Against Women. It came into force in 1981. This Convention consists of 30 Articles divided into VI parts. This Convention eliminates all forms of discrimination against women. The State Parties shall take appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women.

The Convention under Article 1 defines the term Discrimination Against Women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of Human Rights and Fundamental Freedoms in the political, economic, social, cultural, civil or any other field.

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239 India signed this convention on 30th July 1980 and ratified it on 9th July 1993.
240 Article 1
State Parties to the Convention condemned discrimination against women in all its forms\textsuperscript{241} and agreed to pursue by all appropriate means to eliminate discrimination against women and to this end they undertook:

(a) To embody the principle of the equality of men and women in their national Constitutions or any other appropriate legislation if not yet incorporated therein;
(b) To adopt appropriate legislative and other measures prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men;
(d) To refrain from engaging in any act or practice of discrimination against women;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.
(f) To repeal all National penal provisions which contribute discrimination against women.

3.8.9. Optional Protocol to CEDAW, 1999

The Convention did not provide for individual complaint system. In order to fulfil this deficiency the General Assembly on October 7, 1999 adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women which would enable victims of sex discrimination, sexual exploitation and other abuses to the Committee on the Elimination of Discrimination against Women against State Parties to the Protocol. Thus the Protocol would allow to bypass governments to have the committee to investigate their grievances, The 21 Articles Protocol shall come into force when it has been ratified by 10 States. As on September 7, 2000, the Protocol had 9 State Parties

The Protocol provides under Article 2 that a communication may be made to the Committee either by individuals or group of individuals in writing and may not be

\textsuperscript{241} Article 2
anonymous. After the Communication has been admitted, the Committee has the option of contacting the State Party with an urgent request that the State Party take steps to protect the alleged victims from irreparable harm. The State Party is given six months time to provide a written explanation or statement to the complaint.

The Committee’s views and recommendations are transmitted to the Parties concerned. The State Party is given six months time to consider the views of the Committee and to provide a written response, including remedial steps taken.

The Protocol also provided the inquiry procedure that allows the Committee to initiate a confidential investigation by one or more of its members when it has received reliable information of grave or systematic violations, by a State Party, of rights enshrined in the Convention. The Committee may visit the territory of the State Party if so required with the consent of the State Party. Findings, Comments or recommendations of the Committee are transmitted to the State Party. After six months period the State Party may be invited to provide the Committee the details of any remedial efforts taken following an enquiry.

3.8.10. Convention against Torture and other cruel inhuman or degrading treatment or punishment 1984

This Convention was adopted by the General Assembly on 10th December 1984. This Convention came into force on 26th June, 1987.

Article 5 of the Universal Declaration of Human Rights Proclams that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 7 of the International Covenant on Civil and Political Rights reiterates the same. Both these Articles have been referred in the preamble of the Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment. On 9 December, 1975, the General Assembly adopted the Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Finally, in order to make more effective struggle against torture the General Assembly on December 10, 1984
adopted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment.

**Definition of the term ‘Torture’** - The term “torture” as defined by Article 1 of the Convention means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity. But it does not include pain or suffering arising only from inherent in or incidental to lawful sanctions.

**Obligation of State Parties** - Each State Party of the Convention has undertaken the obligation to take effective, legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever, whether a state of war or a threat of war or internal political instability or any other public emergency, may be invoked as a justification of torture. An order from a superior officer or public authority may also not be invoked as a justification of torture.

Each state party is required to ensure that all acts of torture, an attempt to commit torture and act by an accomplice, are offences under its criminal law. Each State party shall make these offences punishable by appropriate penalties taking into account their grave nature.

Each State Party shall take such measures as may be necessary to establish its jurisdiction over the said offence in the following cases: (a) when the offences are committed in any territory under its jurisdiction or on board a ship or aircraft

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242 Article 2, paragraph 1.
243 Ibid, para 2.
244 Ibid, para 3.
245 Article 4, para 1.
246 Article 4, para 2.
registered in that state; (b) when the alleged offender is a national of that state; and (c) when the victim is a national of that state, if that state considers it appropriate. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to Article 8 to any of States mentioned in Paragraph 1 of this Article.

Any State Party in whose territory the alleged offender is present, upon being satisfied, after an examination of information available to it, that the circumstances so warrant, shall take him into custody or take other legal measures to ensure his presence. Such custody or other legal measures may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted. Such State shall immediately make a preliminary inquiry into the facts.

The offences referred to in Article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between State Parties. State Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

In case the State Party in the territory under whose jurisdiction the alleged offender is found, does not extradite him, it shall send the case to its competent authorities for the purpose of prosecution. Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, where there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in Article 4, including the supply of all evidence at their disposal necessary for the proceedings. Finally each State Party is required to ensure in its

247 Article 5, para 1.
248 Ibid, para 2.
249 Article 6, para 1.
250 Article 6, para 2.
251 Article 8, para 1.
252 Article 7, para 1.
253 Article 12.
254 Article 9.
legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as much rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation\textsuperscript{255}.

3.8.11. Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2002

On December 18, 2002, the General Assembly of the U.N. adopted optional protocol to the Convention Against Torture and other cruel, Inhuman or Degrading Treatment or Punishment and called upon all States that have signed, ratified or acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to sign and ratify or accede to the optional protocol. The optional protocol provides for the establishment of sub-committee on prevention\textsuperscript{256}, which shall consist of ten members. After the fiftieth ratification of or accession to the present protocol the number of members of the sub-committee on prevention shall increase to twenty five.

The sub-committee shall:

\begin{itemize}
\item[(a)] Visit the places referred to Article 4 (i.e. places where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority, or at the instigation or with its consent or acquiescence) and make recommendations to State Parties concern the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
\item[(b)] With regard to the National preventive mechanism:
\begin{itemize}
\item[(i)] Advise and assist State Parties, when necessary, in their establishment;
\item[(ii)] Maintain direct and if necessary confidential contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
\end{itemize}
\end{itemize}

\textsuperscript{255} Article 14.
\textsuperscript{256} See Article 5 of the Protocol.
(iii) Advise and assist them in the evaluation of the needs and the means necessary
to strengthen the protection of persons deprived of their liberty against torture
and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States with a view to
strengthening the capacity and the mandate of the national preventive
mechanisms for the prevention of torture and other cruel, inhuman or
degrading treatment or punishment.

(c) Co-operate, for the prevention of torture in general, with the relevant United
Nations organs, and the mechanisms as well the International, Regional and
National Institutions or Organisations working towards the strengthening of
the protection of all persons, against torture and other cruel, inhuman or
degrading treatment or punishment 257.

(d) In order to enable the sub-committee to fulfil its mandate, State Parties to the
present protocol have to undertake certain obligations 258.

Upon ratification, State Parties may make a declaration postponing the
implementation of their obligations under part III or part IV of the present Protocol 259.
The present Protocol shall enter into force in the thirtieth day after the date of deposit
with the Secretary-General of the United Nations of the twentieth instrument
ratification or accession 260. Finally the protocol provides that no reservations shall be
made to the present protocol 261.


The Convention on the Rights of the Child was adopted by the General
Assembly by consensus, on the 30th Anniversary of the Declaration on November 20,
1989 262 which came into force on September 2, 1990. As on June 15, 2000, the
Convention had 191 States parties. The Convention under Article 1 states that a child

257 Article 11 of the Protocol.
258 See Article 14.
259 See Article 24.
260 Article 28.
261 Article 30.
means every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier.

Rights of the Child

A number of rights have been stipulated in the Convention which includes the following:

1. Right to life 263.
2. Right to acquire nationality 264.
3. Right to freedom of expression 265.
4. Right to freedom of thought, conscience and religion 266.
5. Right to freedom of association and to freedom of peaceful Assembly 267.
6. Right to education 268.
7. Right to benefit from social security 269.
8. Right to a standard of living adequate for the child’s physical, mental, spiritual and social development 270.
9. Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health 271.
10. Right to the protection of the law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence 272.

Optional Protocols to the Convention on the Rights of the Child

Two Optional Protocols to the Convention on the Rights of the Child were adopted on May 25, 2000 in New York which is as follows:

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263 Article 6, Para 1
264 Article 7
265 Article 13, Para 1
266 Article 14, Para 1
267 Article 15, Para 1
268 Article 28, Para 1
269 Article 26, Para 1
270 Article 27, Para 1
271 Article 24, Para 1
272 Article 16, Para 1
3.8.12 (a) Optional Protocol on the Involvement of Children in Armed Conflict.

The objective of the Protocol was to seek limits on the issue of children in armed conflict and in particular to raise the minimum age limit for recruitment and to limit the actual participation of persons under 18 years in hostilities\textsuperscript{273}. The protocol prohibits the recruitment of individuals under eighteen years of age by non-State actors. It imposes an obligation upon States to raise the minimum age of recruitment set by the Convention on the Right of the Child.

The Optional Protocol also establishes an obligation upon States to take all feasible measures to prevent the direct participation in hostilities by individuals under the age of eighteen. It further requires States to establish safeguards relating to the voluntary recruitment of individuals under the age of eighteen. Finally, the Protocol sets forth an obligation upon the States to report to the Committee on the Rights of the Child on its implementation.


The Optional Protocol supplements the provisions of the Convention on the Rights of the Child by providing detailed requirements for the criminalization of violations of the rights of children in the context of the sale of children, child prostitution and child pornography.

The Protocol provides definition for the offences of sale of children, child prostitution and child pornography. It sets standards for the treatment of violations under domestic law, with regard to offenders, protection of victims and preventive efforts. It also provides a framework for the prosecution of offenders.

\textsuperscript{273} The Protocol has yet come with force. As on June 15, 2000, the Protocol had one States Party.

The widespread discrimination against the migrant workers and members of their families and the need to make further efforts to improve the situation, a Convention was adopted by the General Assembly on December 18, 1990, which is known as the International Convention on the protection of the Rights of All Migrant workers and members of their families. This Convention is divided into nine parts which cover in its scope and definition, non-discrimination, Human Rights of all migrant workers irrespective of their status, other rights of those who are documented or in a regular situation.

Definition of Migrant Workers

A ‘Migrant Worker’ has been defined under Article 2 of the Convention as ‘a person who is to be engaged or has been engaged in a remunerated activity in a state of which he or she is not a national’. The expression ‘members of the family’ has also been defined under Article 4 as ‘persons married to Migrant Workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognised as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned’.

Rights of the Migrant Workers

A number of rights have been provided to all migrant workers and members of their families which include the following:

(1) They shall be free to leave any State, including their state of origin, without restriction\(^\text{274}\) and the right to enter and remain in their State of origin\(^\text{275}\).

(2) Protection of the right to life under the law\(^\text{276}\).

\(^{274}\) Article 8, Para 1
\(^{275}\) Article 8, Para 2
(3) Prevention from subjection to torture or to cruel, inhuman or degrading
treatment or punishment\textsuperscript{277}.

(4) Forbidding of slavery or servitude\textsuperscript{278}.

(5) Forbidding of forced or compulsory labour\textsuperscript{279}.

(6) Right to freedom of thought, conscience and religion\textsuperscript{280}.

(7) Right to hold opinion without interference\textsuperscript{281}.

(8) Protection from arbitrary or unlawful interference with his or her privacy,
family, home, correspondence or other communications\textsuperscript{282}.

(9) Protection from arbitrary derivation of property\textsuperscript{283}.

(10) Right to liberty and security of person\textsuperscript{284}.

(11) Protection against violence, physical injury, threats or intimidation
whether by public officials or by private individuals\textsuperscript{285}.

(12) Protection from arbitrary arrest or detention\textsuperscript{286}.

(13) Information regarding legal rights while under arrest or detention\textsuperscript{287}.

(14) Right to equality with nationals of the State concerned before the courts
and tribunals\textsuperscript{288}.

(15) No migrant worker or members of his or her family shall be imprisoned
merely on the ground of failure to fulfil a contractual obligation\textsuperscript{289}.

(16) Each case of expulsion must be examined and decided individually.
Collective expulsion of workers has been declared illegal\textsuperscript{290}.

\textsuperscript{276} Article 9
\textsuperscript{277} Article 10
\textsuperscript{278} Article 11, Para 1
\textsuperscript{279} Article 11, Para 2
\textsuperscript{280} Article 12
\textsuperscript{281} Article 13, Para 1
\textsuperscript{282} Article 14
\textsuperscript{283} Ibid
\textsuperscript{284} Article 16, Para 1
\textsuperscript{285} Article 16, Para 2
\textsuperscript{286} Article 16, Para 4
\textsuperscript{287} Article 16, Para 7
\textsuperscript{288} Article 18
\textsuperscript{289} Article 20
\textsuperscript{290} Article 22

This Convention was adopted by the United Nations General Assembly on 13th December 2006. The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all Human Rights and Fundamental Freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The principles of the present Convention shall be:

(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choice, and independence of persons;
(b) Non-discrimination;
(c) Full and effective participation and inclusion in society;
(d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
(e) Equality of opportunity;
(f) Accessibility;
(g) Equality between men and women;
(h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

3.9. SUMMARY

The International community has developed comprehensive legal framework for the protection and promotion of Human Rights. The Charter of the United Nations, 1945 is dedicated to the achievement and observance of Human Rights and fundamental freedoms. The draw-backs of the Charter for the enforcement was to some extent cured by the adoption of the Universal Declaration of Human Rights,

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291 Article 1 of the convention
292 Article 3 of the convention
1948, which enumerated various Human Rights and fundamental freedoms. Though the instrument was only a declaratory nature, it invited global attention towards the need of protection of Human Rights and fundamental freedoms. The UDHR recognises Human Rights as the foundation of peace, justice and democracy. Together with it there are certain principal international Human Rights instruments namely the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966 which have given very wide connotation to the concept of Human Rights and fundamental freedoms.


Since then a plethora of Human Rights Instruments have been adopted which seek to address issues relating to specific themes or sections of people namely Anti Slavery Conventions, Women’s Rights(CEDAW), Torture (CAT), Rights of the Child (CRC), Racial discrimination (ICERD), Genocide Convention, Convention on the status of Refugees, the Convention on the protection of the rights of all Migrant workers and Members of their families (ICRMW) , the Convention on the Rights of the persons with disabilities, and many more. The aim of the Human Rights instrument is to promote, protect and ensure full and equal enjoyment of all Human Rights and Fundamental Freedoms by all persons irrespective of any discrimination.