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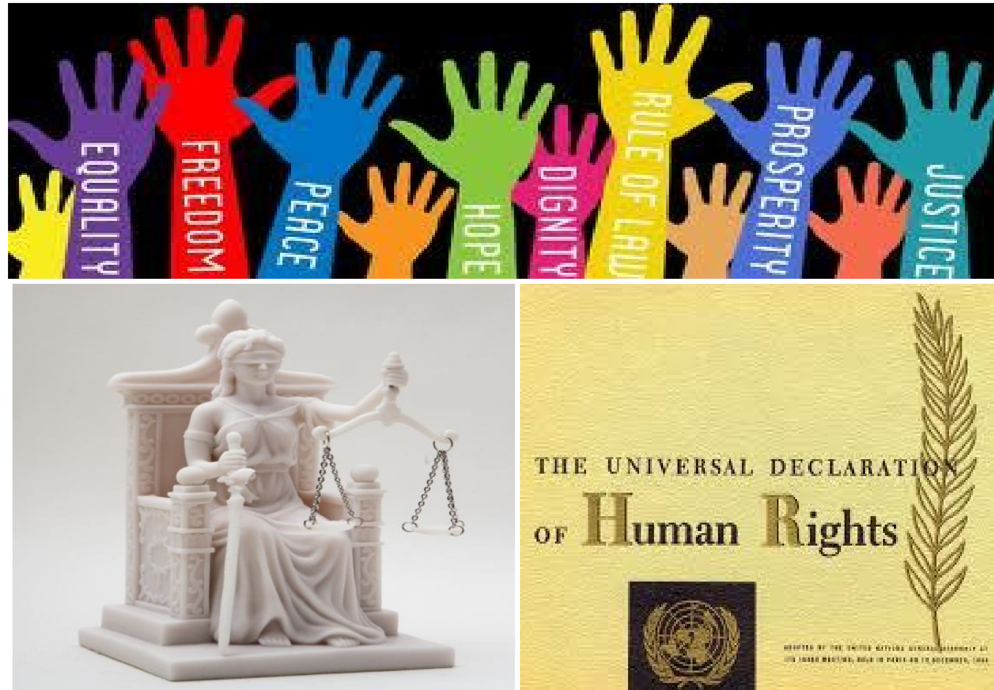

Human Rights

in

International Scenario

Course: HR-01

Vardhaman Mahaveer Open University, Kota

Human Rights

In

International Scenario

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Human Rights in International Scenario

Unit No.	Unit Name	Page No.
Unit – 1	Meaning and Nature of Human Rights	6
Unit – 2	Origin and Development of Human Rights	25
Unit – 3	Universal Declaration of Human Rights	39
Unit – 4	Two Conventions of Human Rights	52
Unit – 5	International Human Rights Protection Bodies	70
Unit – 6	Role of International Court of Justice and International Criminal Court in the Protection of Human Rights	89
Unit – 7	Humanitarian Law Part - I	105
Unit – 8	Humanitarian Law Part - II	119
Unit – 9	Specific Human Rights Conventions relating to Women, Child	137
Unit – 10	Specific of Human Rights Conventions relating to Inhuman Treatment and Labourers	157

HR-1 Introduction

This Course is conceived and produced for the students of Certificate Program in Human Rights who need to study different basic aspects of Human Rights. It will provide understanding, skill and elementary knowledge of Human Rights. It will train learner for career as Human rights volunteers or professionals. Course will also inculcate the understanding of national and International dimensions in human Rights field.

This Block contains Ten Units. First Unit will introduce students with Meaning and Nature of Human Rights. It will also help students in understanding the characteristics of Human rights. This unit will also help students in understanding rationale behind the existence of Human Rights. In Second Unit students will be able to appreciate when and where Human Rights actually originated. It will explain the various sources of human rights along with the role of U. N. in development and establishment of human rights. Third Unit will explain students about Universal Declaration of Human Rights and its historical background. It will also help students in knowing the effect or influence of Universal Declaration of Human Rights on the legal systems. Unit Four will introduce students with 'Two' major Covenants on Human Rights. It will help you in understanding the purpose of these covenants and relations between the two. Unit Five help students in knowing the various international Human Rights protection bodies entrusted with the task of Human Rights protection. Unit will also explain students why these bodies lack in human rights action? Unit Six will explain students about the Role of International Court of Justice and International Criminal court in the Protection of Human Rights. Unit will also explain the limitations of ICJ in protection of Human rights.

Unit seventh will introduce students with the meaning of Humanitarian Law and its position in International Law. It will also explain you about the role of international humanitarian law in prevention of war and in protection of war victims. Unit Eight will explain students about the various private bodies (NGOs) continuously making efforts in protection of human rights. Strategies used by these bodies in protection of human rights.

Unit Nine will explain students about the Human Rights relating to women and children. Unit will explain students about the international legal protection available to them and need of separate laws for protection of human rights of women and children. Unit Ten will apprise students about the specific human rights conventions relating to inhuman treatment and labourers. Unit will also explain the role of ILO in protection of human rights of workers.

UNIT-1

MEANING AND NATURE OF HUMAN RIGHTS

Structure:

1.1. Introduction
1.2. Meaning of Human Rights
1.2.1. Classification
1.2.2. Basic requirements for Human Rights
1.3. General characteristics of Human Rights
1.4. The existence of Human Rights
1.5. Which rights are Human Rights?
1.5.1. Civil and political rights
1.5.2. Rights of women, minorities and groups
1.5.3. Environmental rights
1.5.4. Social rights
1.6. Sum up
1.7. References
1.8. Check your progress
1.9. Answers to check your progress
1.10. Terminal questions

Objectives:

After going through the unit you should be able to:

- Understand the meaning of Human Rights.
- Assess the nature and characteristics of Human Rights.
- Know the rationale behind the existence of Human Rights.
- Clarify that which rights are actually Human Rights.

1.1. Introduction:

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability.

With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits.

However the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms.

1.2. Meaning of Human Rights:

Broadly it may be said that human rights are those fundamental and inalienable rights which are essential for human life. These rights are possessed by every human being, irrespective of his nationality, race, religion, sex etc. simply because of him being a human. Human rights are inherent in human nature and without which humans cannot live as human beings. Human rights and fundamental freedoms allow humans to fully develop and use their human qualities, their intelligence, their talents and their conscience and to satisfy their physical, spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and work of each human being will receive respect and protection.

According to Fawcett, Human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are the rights which cannot, rather must not, be taken away by any legislature or any act of the government and which are often set out in a constitution. As natural rights they are seen as belonging to men and women by their very nature. They may also be described as 'common rights' for they are rights which all men and women in the world would share, just as the common law in England.

A human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human. An alternative explanation was provided by the philosopher Kant. He said that human beings have an intrinsic value absent in inanimate objects. To

violate a human right would therefore be a failure to recognize the worth of human life.

Different counties ensure these rights in different way. In India they are contained in the Constitution as fundamental rights, i.e. they are guaranteed statutorily. In the UK they are available through precedence, various elements having been laid down by the courts through case law. In addition, international law and conventions also provide certain safeguards.

1.2.1. Classification:

Human rights have been divided into three categories:

i) First generation rights which include civil and political rights.

ii) Second generation rights such as economic, social and cultural rights.

iii) Third generation rights such as the right of self-determination and the right to participate in the benefits from mankind's common heritage.

Human rights may be either positive or negative. An example of the former is the right to a fair trial and an example of the latter is the right not to be tortured.

1.2.2. Basic Requirements for Human Rights:

Any society that is to protect human rights must have the following features:

i) A *de jure* or free state in which the right to self-determination and rule of law exist.

ii) A legal system for the protection of human rights.

iii) Effective organized (existing within the framework of the state) or unorganized guarantees.

1.3. Nature of Human Rights:

There are a few general characteristics of Human Rights:-

First, human rights as we know them today are mainly political norms dealing with how people should be treated by their governments and institutions. They *are not ordinary moral norms applying mainly to interpersonal conduct* (such as prohibitions of lying and violence). But we must be careful here since some rights, such as rights against racial and sexual discrimination are primarily concerned to regulate private behavior (Okin 1998). Still, governments are directed in two ways by rights against discrimination. They forbid governments to discriminate in their actions and policies, and they impose duties on governments to prohibit and discourage both private and public forms of discrimination.

Second, human rights *exist as moral and/or legal rights*. A human right can exist as (1) a shared norm of actual human moralities, (2) a justified moral norm supported by strong reasons, (3) a legal right at the national level (here it might be referred to as a "civil" or "constitutional" right), or (4) a legal right within international law.

Third, human rights *are numerous (several dozen) rather than few*. John Locke's rights to life, liberty, and property were few and abstract (Locke 1689), but human rights as we know them today address specific problems (e.g., guaranteeing fair trials, ending slavery, ensuring the availability of education, preventing genocide.) They are the rights of the lawyers rather than the abstract rights of the philosophers. Human rights protect people against familiar abuses of people's dignity and fundamental interests. Because many human rights deal with contemporary problems and institutions they *are not trans-historical*. One could formulate human rights abstractly or conditionally to make them trans-historical, but the fact remains that the formulations in contemporary human rights documents are neither abstract nor conditional. They presuppose criminal trials, governments funded by income taxes, and formal systems of education.

Fourth, human rights *are minimal—or at least modest—standards*. They are much more concerned with avoiding the terrible than with achieving the best. Their dominant focus is protecting minimally good lives for all people (Nickel 2007). Henry Shue suggests that human rights concern the "lower limits on tolerable human conduct" rather than "great aspirations and exalted ideals" (Shue 1996). As modest standards they leave most legal and policy matters open to democratic decision-making at the national and local levels. This allows them to have high priority, to accommodate a great deal of cultural and institutional variation, and to leave open a large space for democratic decision-making at the national level.

Fifth, human rights are *international norms* covering all countries and all people living today. International law plays a crucial role in giving human rights global reach. We can say that human rights *are universal* provided that we recognize that some rights, such as the right to vote, are held only by adult citizens; that some human rights documents focus on vulnerable groups such as children, women, and indigenous peoples.

Sixth, human rights *are high-priority norms*. Maurice Cranston held that human rights are matters of "paramount importance" and their violation "a grave affront to justice" (Cranston 1967). This does not mean, however, that we should take human

rights to be absolute. As James Griffin says, human rights should be understood as "resistant to trade-offs, but not too resistant" (Griffin 2001b). The high priority of human rights needs support from a plausible connection with fundamental human interests or powerful normative considerations.

Seventh, human rights *require robust justifications that apply everywhere and support their high priority*. Without this they cannot withstand cultural diversity and national sovereignty. Robust justifications are powerful but need not be understood as ones that are irresistible.

Eighth, human rights *are rights, but not necessarily in a strict sense*. As rights they have several features. One is that they have right holders — a person or agency having a particular right. Broadly, the right holders of human rights are all people living today. Another feature of rights is that they *focus on a freedom, protection, status, or benefit for the right holders* (Brandt 1983, 44). Rights also *have addressees* who are assigned duties or responsibilities. A person's human rights are not primarily rights against the United Nations or other international bodies; they primarily impose obligations on the government of the country in which the person resides or is located. The human rights of citizens of Belgium are mainly addressed to the Belgian government. International agencies, and the governments of countries other than one's own, are secondary or "backup" addressees. The duties associated with human rights typically require actions involving respect, protection, facilitation, and provision. Finally, rights *are usually mandatory* in the sense of imposing duties on their addressees, but they sometimes do little more than declare high-priority goals and assign responsibility for their progressive realization. It is possible to argue, of course, that goal-like rights are not real rights, but it may be better simply to recognize that they comprise a weaker but useful notion of a right.

There are two conceptions as to the nature of human rights. The orthodox conception defines human rights as those rights that each human has against every other, at all times, in all places, under all conditions, and simply in virtue of her humanity. This orthodox conception is familiar from the philosophical literature on human rights.

The practical conception of human rights is quite different, and is more familiar from international politics than from the philosophical literature. On the practical conception, human rights define a boundary of legitimate political action. Human rights specify the ways in which state officials must and must not act toward their

own citizens, where it is understood that violations of these human rights can morally permit and in some cases morally require interference by the international community. This practical conception of human rights is what one finds in the various proclamations and treaties on human rights, such as the Universal Declaration and the Convention against Torture.

It may be submitted that Human Rights are said to be *negative rights*, in the sense that they only require governments to refrain from doing things. On this view, human rights never require governments to take positive steps such as protecting and providing. To refute this claim we do not need to appeal to social rights that require the provision of things like education and medical care. It is enough to note that this view is incompatible with the attractive position that one of the main jobs of governments is to protect people's rights by creating an effective system of criminal law and of legal property rights. The European Convention on Human Rights (Council of Europe 1950) incorporates this view when it says that "Everyone's right to life shall be protected by law" (Article 2.1). And the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations 1984) imposes the requirement that "Each State Party shall ensure that all acts of torture are offences under its criminal law" (Article 4.1). Providing effective legal protections is providing services, not merely refraining

It is believed that all human rights *are inalienable*. Inalienable right means that its holder cannot lose it temporarily or permanently by bad conduct or by voluntarily giving it up. Inalienability does not mean that rights are absolute or can never be overridden by other considerations. It is doubted that all human rights are inalienable in this sense. One who endorses both human rights and imprisonment as punishment for serious crimes must hold that people's rights to freedom of movement can be forfeited temporarily or permanently by just convictions of serious crimes. Perhaps it is sufficient to say that human rights are very hard to lose.

1.4. The Existence of Human Rights:

The most obvious way in which human rights exist is as norms of national and international law created by enactment and judicial decisions. At the international level, human rights norms exist because of treaties that have turned them into international law. For example, the human right not to be held in slavery or

servitude in Article 4 of the European Convention and in Article 8 of the International Covenant on Civil and Political Rights exists because these treaties establish it. At the national level, human rights norms exist because they have through legislative enactment, judicial decision, or custom become part of a country's law. For example, the right against slavery exists in the United States because the 13th Amendment to the U.S. Constitution prohibits slavery and servitude. When rights are embedded in international law we speak of them as human rights; but when they are enacted in national law we more frequently describe them as civil or constitutional rights. As this illustrates, it is possible for a right to exist within more than one normative system at the same time.

Enactment in national and international law is one of the ways in which human rights exist. But many have suggested that this is not the only way. If human rights exist only because of enactment, their availability is contingent on domestic and international political developments. Many people have sought to find a way to support the idea that human rights have roots that are deeper and less subject to human decisions than legal enactment. One version of this idea is that people are born with rights, that human rights are somehow innate or inherent in human beings (see Morsink 2009). One way that a normative status could be inherent in humans is by being God-given. The U.S. Declaration of Independence (1776) claims that people are "endowed by their Creator" with natural rights of "life, liberty, and pursuit of happiness." On this view, God, the supreme lawmaker, enacted some basic human rights.

Rights plausibly attributed to divine decree must be very general and abstract (life, liberty, etc.) so that they can apply to thousands of years of human history, not just too recent centuries. But contemporary human rights are specific and many of them presuppose contemporary institutions (e.g., the right to a fair trial and the right to education). Even if people are born with God-given natural rights, we need to explain how to get from those general and abstract rights to the specific rights found in contemporary declarations and treaties.

Attributing human rights to God's commands may give them a secure status at the metaphysical level, but in a very diverse world it does not make them practically secure. Billions of people do not believe in the God of Christianity, Islam, and Judaism. If people do not believe in God, or in the sort of god that prescribes rights, then if you want to base human rights on theological beliefs you must persuade these people of a rights-supporting theological view. This is likely to be

even harder than persuading them of human rights. Legal enactment at the national and international levels provides a far more secure status for practical purposes.

Human rights might also exist independently of legal enactment by being part of actual human moralities. It appears that all human groups have moralities, that is, imperative norms of behavior backed by reasons and values. These moralities contain specific norms (for example, a prohibition of the intentional murder of an innocent person) and specific values (for example, valuing human life.) One way in which human rights could exist apart from divine or human enactment is as norms accepted in all or almost all actual human moralities. If almost all human groups have moralities containing norms prohibiting murder, these norms could constitute the human right to life. Human rights can be seen as basic moral norms shared by all or almost all accepted human moralities.

This view is attractive but has serious difficulties. Although worldwide acceptance of human rights has been increasing rapidly in recent decades, worldwide moral unanimity about human rights does not exist. One Human rights declarations and treaties are intended to change existing norms, not just describe the existing moral consensus. Further, it is far from clear that the shared norms that do exist support rights held by individuals. A group may think that torture is generally a bad thing without holding that all individuals have a high-priority right against being tortured.

Yet another way of explaining the existence of human rights is to say that they exist most basically in true or justified moralities. On this account, to say that there is a human right against torture is mainly to assert that there are strong reasons for believing that it is almost always wrong to engage in torture and that protections should be provided against its practice. This approach would view the Universal Declaration as attempting to formulate a justified political morality. It was not merely trying to identify a preexisting moral consensus; it was also trying to create a consensus that could be supported by very plausible moral and practical reasons. This approach requires commitment to the objectivity of such reasons. It holds that just as there are reliable ways of finding out how the physical world works, or what makes buildings sturdy and durable, there are ways of finding out what individuals may justifiably demand of governments. Even if there is little present agreement on political morality, rational agreement is available to humans if they will commit themselves to open-minded and serious moral and political inquiry. If moral reasons exist independently of human construction, they can— when combined

with premises about current institutions, problems, and resources — generate moral norms different from those currently accepted or enacted. The best form of existence for human rights would combine robust legal existence with the sort of moral existence that comes from being supported by strong moral and practical reasons.

1.5. Which Rights are Human Rights?

This is essential to clarify that which rights belong to human rights. Not every question of social justice or wise-governance is a human rights issue. For example, a country could have too much income inequality, inadequate provision for higher education, or no national parks without violating any human rights. Deciding which norms should be counted as human rights is a matter of great difficulty. And there is continuing pressure to expand lists of human rights to include new areas. Many political movements would like to see their main concerns categorized as matters of human rights, since this would publicize, promote, and legitimize their concerns at the international level. A possible result of this is "human rights inflation," the devaluation of human rights caused by producing too much bad human rights currency.

One way to avoid rights inflation is to follow Cranston in insisting that human rights only deal with extremely important goods, protections, and freedoms. A supplementary approach is to impose several justificatory tests for specific human rights. For example, it could be required that a proposed human right not only deal with some very important good but also respond to a common and serious threat to that good, impose burdens on the addressees that are justifiable and no larger than necessary, and be feasible in most of the world's countries (Nickel 2007). This approach restrains rights inflation with several tests, not just one master test.

Human rights are specific and problem-oriented (Dershowitz 2004, Donnelly 2003, Shue 1996, Talbott 2005). Historic bills of rights often begin with a list of complaints about the abuses of previous regimes or eras. Bills of rights may have preambles that speak grandly and abstractly of life, liberty, and the inherent dignity of persons, but their lists of rights contain specific norms addressed to familiar political, legal, or economic problems.

In deciding which specific right is human right it is possible to make them either too little or too much from international documents such as Universal Declaration and the European Convention. One makes too little of them by proceeding as if

drawing up a list of important rights were a new question, never before addressed, and as if there were no practical wisdom to be found in the choices of rights that went into the historic documents. And one makes too much of them by presuming that those documents tell us everything we need to know about human rights. This approach involves a kind of fundamentalism: it holds that if a right is on the official lists of human rights that settle its status as a human right but the process of listing human rights in the United Nations and elsewhere was a political process with plenty of imperfections. There is little reason to take international diplomats as the most authoritative guides to which human rights these are. Further, even if a treaty could settle the issue of whether a certain right is a human right within international law, such a treaty cannot settle its weight. It may claim that the right is supported by weighty considerations, but it cannot make this so. If an international treaty enacted a right to visit national parks without charge as a human right, the ratification of that treaty would make free access to national parks a “human right” within international law. But it would not be able to make us believe that the right to visit national parks without charge was sufficiently important to be a real human right.

Once one takes seriously the question of whether some norms that are now counted as human rights do not merit that status and whether some norms that are not currently accepted as human rights should be upgraded, there are many possible ways to proceed. One approach that should be avoided puts a lot of weight on whether the norm in question really is, or could be, a right in a strict sense. This approach might yield arguments that human rights cannot include children's rights since young children cannot exercise their rights by invoking, claiming, or waiving (Hart 1955, Wellman 1995). This approach begs the question of whether human rights are rights in a strict sense rather than a fairly loose one. The human rights movement and its purposes are not well served by being forced into a narrow conceptual framework. When we look at human rights documents we find that they use a variety of normative concepts. Sometimes they speak of rights, as when the Universal Declaration says that “Everyone has the right to freedom of movement” (Article 13). Sometimes these documents issue prohibitions, as when the Universal Declaration says that “No one shall be subjected to arbitrary arrest, detention, or exile” (Article 9). And at other times they express general principles, as illustrated by the Universal Declaration's claim that “All are equal before the law” (Article 7).

A better way to evaluate a norm that is nominated for the status of human right is to consider whether it is compatible with the general idea of human rights that we find in international human rights documents. If the general idea of human rights suggested above is correct, it requires affirmative answers to questions such as whether this norm could have governments as its primary addressees, whether it ensures that people can have minimally good lives, whether it has high priority, and whether it can be supported by strong reasons that make plausible its universality and high priority.

Questions about which rights are human rights arise in regard to many families of human rights. Discussed below are (1) civil and political rights; (2) minority and group rights; (3) environmental rights; and (4) social rights.

1.5.1. Civil and Political Rights:

These rights are familiar from historic bills of rights such as the French Declaration of the Rights of Man and the Citizen (1789) and the U.S. Bill of Rights (1791, with subsequent amendments). Contemporary sources include the first 21 Articles of the Universal Declaration, and such treaties as the European Convention, the International Covenant on Civil and Political Rights etc. There are numerous civil and political rights. A few examples are given below:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

Everyone has the 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 interests.

These rights fit the general idea of human rights. First, they primarily impose responsibilities on governments and international organizations. Second, they are modest norms in that they protect against some of the worst things that happen in human society and political life rather than setting out standards of excellence. Third, they are international norms establishing standards for all countries — and that have been accepted by more than three quarters of the world's countries.

Finally, it is plausible to make claims of high priority on their behalf, and to support these claims of importance with strong reasons.

1.5.2. Rights of Women, Minorities, and Groups:

Equality of rights for historically disadvantaged or subordinated groups is a longstanding concern of the human rights movement. Human rights documents repeatedly emphasize that all people, including women and members of minority ethnic and religious groups, have equal human rights and should be able to enjoy them without discrimination. The right to freedom from discrimination figures prominently in the Universal Declaration and subsequent treaties. The Civil and Political Covenant, for example, commits participating states to respect and protect their people's rights "without distinction of any kind, such as race, color, sex, language, political or other opinion, national or social origin, property, birth, or social status"(on minority and group rights see Nickel 2007, ch. 10).

A number of standard individual rights are especially important to ethnic and religious minorities, including rights to freedom of association, freedom of assembly, freedom of religion, and freedom from discrimination. Human rights documents also include rights that refer to minorities explicitly and give them special protections. For example, the Civil and Political Covenant in Article 27 says that persons belonging to ethnic, religious, or linguistic minorities "shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Feminists have often protested, however, that standard lists of human rights do not sufficiently take into account the different risks faced by women and men. For example, issues like domestic violence, reproductive choice, and trafficking of women and girls for sex work did not have a prominent place in early human rights documents and treaties. Lists of human rights have had to be expanded "to include the degradation and violation of women" (Bunch 2006, 58; Lockwood 2006). Further, violations of women's human rights often occur in the home at the hands of other family members, not in the street at the hands of the police. Most violence against women occurs in the "private" sphere. This has meant that governments cannot be seen as the only addressees of human rights and that the right to privacy of home and family needs qualifications to allow police to protect women within the home.

The issue of how formulations of human rights should respond to variations in the sorts of risks and dangers that different people face is difficult and arises not just in relation to gender but also in relation to age, profession, political affiliation, religion, and personal interests. Due process rights, for example, are much more useful to young people (and particularly young men) than they are to older people since the latter are far less likely to run afoul of the law.

Since 1964 the United Nations has mainly dealt with the rights of women and minorities through specialized treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention on the Rights of the Child (1989), and the Convention on the Rights of Persons with Disabilities (2007). See also the Declaration on the Rights of Indigenous Peoples (2007). Specialized treaties allow international norms to address unique problems of particular groups such as assistance and care during pregnancy and childbearing in the case of women, custody issues in the case of children, and the loss of historic territories by indigenous peoples.

Minority groups are often targets of violence. Human rights norms call upon governments to refrain from such violence and to provide protections against it. This work is partly done by the right to life, which is a standard individual right. It is also done by the right against genocide which protects *groups* from attempts to destroy or decimate them. The Genocide Convention was one of the first human rights treaties after World War II.

The right against genocide seems to be a group right. It is held by both individuals and groups and provides protection to groups as groups. It is largely negative in the sense that it requires governments and other agencies to refrain from destroying groups; but it also requires that legal and other protections against genocide be created at the national level.

1.5.3. Environmental Rights:

In spite of the danger of rights inflation, there are doubtless norms that should be counted as human rights but are not generally so treated. After all, there are lots of areas in which people's dignity and fundamental interests are threatened by governmental actions and omissions. Consider environmental rights, which are often defined as rights of animals or of nature itself. Conceived in this way they do not fit our general idea of human rights because the right holders are not humans or human groups. But more modest formulations are possible; environmental rights

can be understood as rights to an environment that is healthy and safe. Such a right is human-oriented: it does not cover directly issues such as the claims of animals, biodiversity, or sustainable development (Nickel 1993. Hayward 2005).

The right to a safe environment can be sculpted to fit the general idea of human rights suggested above. It calls on governments and international organizations to regulate the activities of both governmental and nongovernmental agents to ensure that environmental safety is maintained. Citizens are secondary addressees. This right sets out a modest environmental standard, safety for humans, rather than calling for higher and broader standards of environmental protection. (Countries that are able to implement higher standards are of course free to enact those standards in their law or bill of rights.)

A justification for this right must show that environmental problems pose serious threats to fundamental human interests, values, or norms; that governments may appropriately be burdened with the responsibility of protecting people against these threats; and that most governments actually have the ability to do this. This last requirement —feasibility — may be the most difficult. Environmental protection is expensive and difficult, and many governments will be unable to do very much of it while meeting other important responsibilities. The problem of feasibility in poorer countries might be addressed here in the same way that it was in the Social Covenant. That treaty commits governments not to the immediate realization of social rights for all, but rather to making the realization of such rights a high-priority goal and beginning to take steps towards its fulfillment.

1.5.4. Social Rights:

The Universal Declaration included social (or "welfare") rights that address matters such as education, food, and employment. Their inclusion has been the source of much controversy (Beetham 1995). Social rights are often alleged to be statements of desirable goals but not really rights. The European Convention did not include them (although it was later amended to include the right to education). Instead they were put into a separate treaty, the European Social Charter. When the United Nations began the process of putting the rights of the Universal Declaration into international law, it followed the model of the European system by treating economic and social standards in a treaty separate from the one dealing with civil and political rights. This treaty, the International Covenant on Economic, Social, and Cultural Rights (the "Social Covenant," 1966), treated these standards as rights-albeit rights to be progressively realized.

The Social Covenant's list of rights includes nondiscrimination and equality for women in economic and social life (Articles 2 and 3), freedom to work and opportunities to work (Article 4), fair pay and decent conditions of work (Article 7), the right to form trade unions and to strike (Article 8), social security (Article 9), special protections for mothers and children (Article 10), the right to adequate food, clothing, and housing (Article 11), the right to basic health services (Article 12), the right to education (Article 13), and the right to participate in cultural life and scientific progress (Article 15).

Article 2.1 of the Social Covenant sets out what each of the parties commits itself to do about this list, namely to "take steps, individually and through international assistance and co-operation…to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant." In contrast, the Civil and Political Covenant simply commits its signatories to "respect and to ensure to all individuals within its territory the rights recognized in the present Covenant" (Article 2.1). The contrast between these two levels of commitment has led some people to suspect that economic and social rights are really just valuable goals.

The system to monitor and promote compliance with the Social Covenant is modest since it mainly requires participating countries to make periodic reports on measures taken to comply with the treaty. Countries agree "to submit…reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein" (Article 16). A committee of experts, created by the Economic and Social Council in 1987, is given the job of looking at the progress reports from the participating countries. This body, the Committee on Economic, Social and Cultural Rights, studies the reports, discusses them with representatives of the governments reporting, and issues interpretive statements known as "General Comments" on the requirements of the treaty. An amendment to the treaty which allows the Committee on Economic, Social, and Cultural Rights "to receive complaints from individuals for violations of economic and social rights has also come into force."

Why did the Social Covenant opt for progressive implementation and thereby treat its rights as being somewhat like goals? The main reason is that more than half of the world's countries were in no position, in terms of economic, institutional, and human resources, to realize these standards fully or even largely. For many

countries, noncompliance due to inability would have been certain if these standards had been treated as immediately binding.

Opponents of social rights often deny them the status of human rights, restricting that standing to civil and political rights. Familiar objections to social rights include the following: (1) they do not serve truly fundamental interests; (2) they are too burdensome on governments and taxpayers; and (3) they are not feasible in less-developed countries (Beetham 1995; Cranston 1967, 1973; Howard 1987; Nickel 2005, 2007).

The reality is that social rights serve very basic interests. For example hunger and ignorance, the importance of food and other basic material conditions of life is easy to show. These goods are essential to people's ability to live, function, and flourish. Without adequate access to these goods, interests in life, health, and liberty are endangered and serious illness and death are probable. The connection between having a minimally good life and having reasonably secure access to the goods the right guarantees is direct and obvious — something that is not always true with other human rights (Orend 2002, 115).

The second objection is that social rights are too burdensome. It is very expensive to guarantee to everyone basic education and minimal material conditions of life. Perhaps social rights are too expensive or burdensome to be justified even in rich countries. Frequently the claim that social rights are too burdensome uses other, less controversial human rights as a standard of comparison, and suggests that social rights are substantially more burdensome or expensive than liberty rights. Suppose that we use as a basis of comparison liberty rights such as freedom of communication, association, and movement. These rights require both respect and protection from governments. And people cannot be adequately protected in their enjoyment of liberties such as these unless they also have security and due process rights. The costs of liberty, as it were, include the costs of law and criminal justice. Once we see this, liberties start to look a lot more costly. To provide effective liberties to communicate, associate, and move it is not enough for a society to make a prohibition of interference with these activities part of its law and accepted morality. An effective system of provision for these liberties will require a legal scheme that defines personal and property rights and protects these rights against invasions while ensuring due process to those accused of crimes. Providing such legal protection in the form of legislatures, police, courts, and prisons is extremely expensive.

The third objection to social rights is that they are not feasible in many countries. It is very expensive to provide guarantees of subsistence, minimal public health measures, and basic education. It is clear that, the Social Covenant dealt with the issue of feasibility by calling for progressive implementation, that is, implementation as financial and other resources permit.

1.6. Sum up:

Human rights are fundamental to the stability and development of countries all around the world. Human right is in fact a natural, moral, common and universal right which every human possesses because he is a human. Kant has opined that violating a human right would be a failure to recognize the worth of human life.

For existence of Human rights a Free State, a legal system and effective guarantees are essential. Human rights posses a few features like today they are mainly political norms dealing with how people should be treated by their governments, they exist as moral or legal rights, are numerous, minimal standards, international and high priority norms.

As to the nature of human rights there are two conceptions the orthodox and practical. Orthodox conception defines human rights as those rights that each human has against every other, at all times, in all places, under all conditions and simply in virtue of her humanity. According to practical conception, human rights define a boundary of legitimate political action.

There are different rationales behind the existence of human rights. The most obvious way in which human rights exist is as norms of national and international law created by enactment and judicial decisions. However many people have suggested that human rights have deeper roots. For example these rights are inherent in humans by being natural or by being god given; these rights are part of actual human moralities backed by reasons and values. It is also essential to clarify that which rights belong on lists of human rights. Not every question of social justice or wise-governance be a human right issue. A better way to evaluate a norm for the status of human right is to consider a few questions like, is it compatible with the general idea of human rights as we find in international documents, whether this norm could have governments as its primary addresses, whether it ensures minimally good lives of people, whether it has high priority etc. If there are affirmative answers to these questions a norm may be fit to be a human right. In

the present unit the fitness of civil and political right, minority and group rights, environmental rights and social rights is discussed.

1.7. References:

1. Human Rights under International Law – Dr. S.K. Kapoor
2. The Stanford Encyclopedia of Philosophy, 2013
3. Human Rights: New dimensions and challenges, J. Symonides.

1.8. Check your progress:

(A) Whether the statement is true or false?

1. Human rights are sometimes called fundamental rights.
2. Human rights are natural and inalienable.
3. For the protection of human rights a 'de jure state' is not required.
4. Human rights may be either positive or negative.
5. Every question of social justice is a human right issue.

(B) Fill in the blanks

1. Human rights are …………… priority norms.
2. Self determination is a ……….. generation right.
3. ……………….. conception define human right as a boundary of legitimate political action.
4. Human rights might also exist independently of…………………
5. Social rights include matters such as ………….. and ……………

1.9. Answers to check your progress:

A) 1. True

2. True
3. False
4. True
5. False

B) 1. High

2. Third
3. Practical

4. Legal Enactment
5. Education and Food

1.10. Terminal questions

1. Throw light upon the nature and characteristics of Human Rights.
2. What are the rationales behind the existence of Human Rights?

UNIT-2

ORIGIN AND DEVELOPMENT OF HUMAN RIGHTS

Structure:

1.11. Introduction
1.12. Origin and development of Human Rights
1.12.1. The first charter and spread of Human Rights
1.12.2. Vedas in India
1.12.3. Developments in England
1.12.4. Natural Law bearing natural rights
1.12.5. Revolutions
1.13. Development of Human Rights in International Law and its Universalisation
1.13.1. Aftermath of World War-I
1.13.2. Aftermath of World War-II
1.14. UN charter and Human Rights
1.15. Sum up
1.16. References
1.17. Check your progress
1.18. Answers to check your progress
1.19. Terminal questions

Objectives:

After going through the unit you should be able to:

- Know that when and where Human Rights actually originated.
- Understand that there are a few oldest written sources of Human Rights.
- Comprehend the gradual development of Human Rights.
- Role of UN in the establishment of Human Rights.

2.1. Introduction:

Human Rights are derived from the principle of Natural Law. They are neither derived from the social order nor conferred upon the individual by the society. They reside inherently in the individual human beings independent of and even prior to his participation in the society. Consequently, they are the result of recognition by the State but they are logically independent of the legal system for their existence. Their origin may be sought in the natural law and not in the positive law. They are based on their intrinsic justification and not on their enactment or recognition by certain individuals. They do not depend on any formulation or accepted authority. The belief that everyone, by virtue of her or his humanity, is entitled to certain human rights is fairly new. Its roots however, lie in earlier tradition and documents of many cultures. It took the catalyst of World War II to propel human rights on to the global stage and into the global conscience.

Throughout much of history people acquired rights and responsibilities through their membership in a group-a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you". The Hindu Vedas, the Babylonian code of Hammurabi, the Bible, the Quran and the analects of Confucius are five of the oldest written sources which address questions of people's duties, rights and responsibilities. In addition the Inca and Aztec codes of conduct and justice and an Iroquois constitution were Native American sources that existed well before the 18th century. In fact all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their members.

2.2. Origin and Development of Human Rights:

The conception of human right is not the very modern one, though it appears to be so. The roots of human rights are found very deep in the eternity in the ancient and ancient most cultures which have been rooted out by passage of time and rule of human atrocities of certain races.

2.2.1. The first charter and spread of Human Rights:

In 539 B.C., the armies of Cyrus the great, the first king of Persia, conquered the city of Babylon. But it was his next actions that marked a major advance for man. He freed the slaves, declared freedom of religion and established racial equality. These and other decrees were recorded on a baked-clay cylinder in the Akkadian

language with cuneiform script. This ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four articles of UDHR.

From Babylon, the idea of human rights spread quickly in India, Greece and eventually Rome. In Rome the concept of natural law arose in the form of 'Jus Naturale' which was the basis of their 'Jus Civile' and 'Jus Gentium'. The stoic philosophers in Greece found that all are being pervaded by a supreme, natural and universal power.

2.2.2. Vedas in India:

The human rights conception has originated in the ideas of mercy, kindness and pity on human beings in various religious scriptures of India.. Vedas are the most ancient or the first, religious book of mankind, revealed in Aaryaavarta the Great Land of Aryans. The following preaching in the Yajurveda throws a prism of light on friendly behavior with all creatures of the world what to say of only human being :

दृते दृहँ मा मित्रस्य मा चक्षुषा सर्वाणि भूतानि समीक्षन्ताम्।

मित्रस्याहं चक्षुषा सर्वाणि भूतानि समीक्षे मित्रस्य चक्षुषा समीक्षामहे।। (यजु 36-18)

Drite drinham maa mitrasya maa chakshusha servant bhootaani sameekshantaam.

Mitrsyaham chakshusha sarvaani bhootni sameekshe mitrasya chakshushaa Sameeksha mahe (Yaju. 36-18).

Oh Lord! Let my eye view be firm in order that all creatures may look at me by friendly sight. In the same way I also may see all creatures with friendly sight and all of us creatures may see each other in friendly view.

In most references, leaving lust, anger etc. mental derelictions and narrowness, to deal with others with truth and liberality has been preached in the Vedas' 'Vasudhaiva Kutumbakam' (वसुधैवकुटुम्बकम्द्धण् The whole world is certainly one family, has been preached and pressed in Vedic literature.

2.2.3. Development in England:

Magna Carta of 1215, Petition of Rights of 1628, Habeas Corpus Act of 1679, Bill of Rights of 1689 is some of such developments in England which took care of human right protection.

Magna Carta: Magna Carta, the declaration of freedom dealt with the rights of different contemporary sections of the society; for instance, that the churches will

be independent of the control of the King, London and other cities will be free to utilize or practice their freedoms and customs. Unjust taxes will not be imposed upon trader or businessmen and so on. A very important article of this declaration was Article 39 which provided that no free person shall be made a prisoner, evicted by unjust means, exiled from the country, or will not be killed or murdered or executed in any way unless such action was permissible by some decisions of the House of Lords or the law of the land and neither anyone shall be deprived of justice.

Petition of Rights: Petition of Rights was allowed by Charles First in 1628. This was a Parliamentary declaration in which freedoms of people were dealt with. For example, that nobody shall be indebted nor taxed without the permission of the Parliament, nobody shall be imprisoned in an arbitrary way.

Habeas Corpus Act: Habeas Corpus Act was officially titled as an Act for the better securing Liberty of an individual. This Act was enacted by Charles second in 1679. It was mainly concerned with the prisoners who were imprisoned in some criminal offence, and the validity of their sentence was to be expeditiously heard.

Bill of Rights: Bill of Rights, 1689 was officially titled as an Act for Declaring the Rights and Liberties of the subjects. The object of this Act was to substitute for the Habeas Corpus Act, 1679 so that it would give benefit to those persons also who were imprisoned on some charges other than the criminal charges. Through this Bill the power of the King to suspend a law or the execution of law by a legal authority was condemned and it was provided that the King cannot do so without the approval of the Parliament.

2.2.4. Natural Law bearing Human Rights:

It was particularly the 17th and 18th centuries in which the conception of natural law and the natural rights inherent in it had actually originated. The scientific discoveries of Galileo and Sir Isac Newton in the 17th century and of Thomas Hobbes, rationalism of Rene Descartes and empiricism of Francis Bacon and John Locke as well as the ideas of Spenoza inspired faith in Natural Law and Universal Organism. During the 18th century John Locke, the English Philosopher may be called the most important theorist of natural law. John Locke broadly discussed that certain rights are apparently available to a person being a human being only, because in the state of nature they existed such rights are right to life, right to liberty and right to property. When the humanity entered the civil social life pursuant to social contract, then the only enforcement of such rights was

surrendered to the State and not these rights themselves. The State cannot ascertain these reserved rights. The State itself exists under that contract that obliges it to protect the interests of its members.

In the 17th century, the protagonists of social contract theory, mainly Rousseau undertook to explain that State was an artifact, that is, an artificial creation of individuals, or a result of the social contract. He began with the State of Nature wherein a man was free and independent in all respects and from this state of nature emerged a political society due to separate acts of individual, whereby they undertook with one another to set up a Government which would be responsible for promotion of their common interests. The political society created by this process would by majority proceed to appoint Governors in accordance with the specified terms of the contract or the instrument of trust or an act of delegation empowering him as such. The Governor so appointed would act on behalf of the people protecting the general interests and their natural rights. The violation of such terms or disobedience to the dictates of the contract would give rise to a rebellion against it.

2.2.5. Revolutions: The above mentioned social contract theories of Locke and Rousseau, revitalized the concept of natural rights. These theories put forward certain dynamic contents which greatly influenced the revolutions of America and France.

American Revolution: The American Revolution Period since 1763 to 1788 was a very important age of constructive ideas and progressive expectations. In this period, the Declaration of Independence of United States of America, Bill of Rights of Virginia, the constitution of Pennsylvania with the Declaration of their Primary Rights, witness the march on the highway of Human Rights. The British Government's stand was that the colonies should also share in the expenses incurred in their administration. As such in the last half of the 18th century it started to take various regulatory measures introducing certain new taxes. The American People revolted against such imposition of taxes on the ground that they did not have their representatives in the British Parliament; hence it had no right to impose taxes upon them.

The notion of independence of the people of the American States and their determination to overthrow the authority of the Imperial Tyrannical Government resulted in their Declaration of Independence on July 4, 1776. This unique document in the line of Human Rights was drafted by Thomas Jefferson which

attacked not only against conception of the Divine Right of the King but also against a Government which has no reflection of the will of the people. This document declared:

"We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable rights that among these are life, liberty and pursuit of happiness. That to secure these rights Governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of Government becomes destructive of these ends, it I the right of the people to alter or abolish it and institute new Government." Further on 15th December, 1791 the first ten amendments of the constitution were made which were known as Bill of Rights and later on became part of the Constitution of U.S.A. Thereafter further amendments strengthened the assertion of human rights.

The 13th Amendment prohibited slavery and involuntary servitude. The 14th Amendment widened the base of American citizenship. It was further provided that the States shall neither make nor enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the legal protection of the laws. The 15th Amendment laid down that the citizen's right to vote shall not be denied or abridged by the United States or any State on the Grounds of race, colour or precedent condition of servitude.

The French Revolution was the result of economic and social inequalities and injustices of the Ancient regime of France. These inequalities were prevalent not only among the third estate-holders but also among the First estate-holders, that is the Clergymen as well as among the second estate-holders, the nobles and peers. Rousseau at that time claimed that they were at the dawn of the new age of mankind and believed that the natural and imperceptible right to life, liberty and pursuit of happiness were to prosper. The Government must preserve and safeguard these rights. if the Government fails to do so, it has no right to remain in power. On August 27, 1789 the representatives of the people of France formed a National Assembly and resolved an authentic declaration of natural and inalienable rights of the people. This Declaration of Human Rights propagated those rights which were according to them were refused by the preceding rulers. The Declaration propagated the Sovereign Rights of the nation, liberty, equality, ownership, vote, legislation, taxation all of which were to be controlled by the

Representative of the people. Human dignity and idealism were propagated to be the unalienable and untransferable rights of all human beings. This Declaration of liberty and human right proved to be a milestone in the development of Human Rights.

After the recognition of the French Declaration, the Western and Eastern European countries, Soviet Union of Russia and Asian and some other countries of the world also recognized human rights in their Constitutions.

2.3. Development of Human Rights in International Law and its Universalization:

2.3.1. Aftermath of World War-I:

At the end of the First World War of 1919, some attempts were made on liberal level favoring the common man. The Treaty of Versailles tended to promote and universalize human rights though it resulted in no success. The Institute of International Law, though a private organization, was formed, which initiated the measures to study and formulate the principle of human rights and their formation as Code of Universal application, which was merely a vision of the expectations and not a reality. The pronouncements of this Institute had no validity. However, the chief aim of the Institute was to extend to the entire world international recognition of the rights of man. The Communist Governments of U.S.S.R. and the Fascist Governments of Germany and Italy were totalitarian Government and they did not recognize human rights as such but only recognized human rights of their party-men or followers or monopolists. Every human being was not entitled to human rights as per their vision. One party rule of Communists never recognized democracy. Only a person belonging to the Communist Party could be elected. They also discarded the rights of clergy-men to propagate religion in public or to have any preferential status in society. The influence of Communism began to spread in other parts of Europe. The Capitalist or Empirical Governments alert of the nearing danger, invented a way of polity called socialism, which is the middle way between a totalitarian and a capitalist government. Under the philosophy of Socialism, big or chief industries such as railways, roadways, airways, or other heavy industries like those of electricity, etc. were to be nationalized and their workmen and other employees were to be given better facilities and status, better wages, pay-scales, etc. and other amenities. The rights of workmen to be united

and bargained collectively with the industrialists were recognized. However, the exploitation of the common people continued, though a bit lesser. The Human Rights suffered under the yoke of socialist pattern of governments also.

In between the Institute of International Law in 1929 adopted an international declaration of the Rights of man, which contained principles for acceptance as rules of law by the states.

(i) To recognize the equal rights of every individual to life, liberty and property and to accord to all within its territory the full and entire protection of these rights without distinction as to nationality, sex, race, language or religion;

(ii) to recognize the right of every individual to the free practice, both public and private, of every faith, religion or belief : Provided that the said practice shall not be incompatible with public order and good morals.

(iii) to recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language;

(iv) to recognize that no state is empowered to refuse to any of their nationals, private and public rights, especially admission to public places and the exercise of the different economic activities and of professions and industries;

After the end of the First World War, some constructive changes in the favor of human rights are visible. The developing International Law was actually having the learning towards human rights. However the Covenant of the League of Nations did not make any specific mention of Human Rights. Along with the rights of minorities and the Mandate System, there was only a secondary expression of Human Rights, in the Covenant. But in the conduct and practice of League of Nations the evidences of the protection of the rights of the minorities and their right of self-determination are found. However these rights cannot be said to be the rights of any individual person except that they are collective rights of people of a section of the people. The special provisions which had been made or the protection of interests of minorities were not purely bilateral treaties rights. They were clearly of international interest. The Minority Treaties of 1919 made with Poland worked as an ideal of the Treaties made with Austria, Bulgaria, Czechoslovakia, Greece, Rumania, Turkey and Yugoslavia and it was provided that these provisions are mandatory as inter-continental interests and these should be conferred on the responsibility of the League of Nations. In this way, the practice of the League of Nations cleared the way for checking of the institutional

restraints on the rights of the sovereign governments. Though under the auspices of the League of Nations protection of the rights of minorities was dealt with, but, however, there was no mention of the general standards of human rights or the general norms thereof. These Treaties did not mention of the individual rights, but afforded benefit to individuals indirectly.

As the special consequential benefit of the League of Nations the Anti-Slavery Convention (Convention in protest of Slavery Custom) of 1922 may be taken. The Member States of this Convention bound themselves to end this custom of slavery in their States or territories under their control. In this concern an Advisory Committee was also constituted relating to misconduct or maltreatment against women and children enslaved. In the same way a Child Welfare Committee prepared the Geneva Declaration on the Rights of the Child, and inspired many nations to accept it. However, the League of Nations rejected this Declaration in 1924. A Refugee Organization also came into existence in 1921. In respect of various difficulties one of the great difficulty was the shortage of funds, the Refugee Organization performed an appreciable work of rehabilitation of two million refugees. The Refugee Organization also issued a passport for the refugee which is known as Nanson Passport. Under this passport the refugees could rehabilitate them in a country of territory wherever they could get refuge or permission to rehabilitate thus as an individual human right was recognized. It may be taken to be an important success or achievement in the field of Universal Human Rights. In order to check the mal-trade of fatal medicines more influential Conventions were accepted in between 1925 and 1931 which indicate the concern for individual welfare within the territories of different States.

In other spheres of the international law also the universal interest for individual rights was visible. The International Labour Organization, the Committee on International Intellectual Cooperation and the Health Committee which was formed under the auspices of the League of Nations are worth mention. These organizations worked to form an atmosphere by their actions for the entry of the League of Nations therein, so that human status for workmen at the international level may be ascertained. The International Labour Organization (I.L.O.) was established in 1919 as an autonomous body and it was affiliated with the League of Nations. The very old and important function of this organization is to accept Conventions and recommendations. It has contributed a great part of its functions to the scope of Human Rights. The major Conventions which it has accepted are

the Convention of 1930 relating to forced or compulsory labour, the Convention of 1957 relating to the abolition of forced labour, the Convention of 1948 relating to the freedom of forming trade unions, and the protection of their right to organize themselves into trade unions, the Convention of 1958 relating to discrimination in employment and sub-employment, the Convention of 1962 relating to social policy. All these conventions are related to the extension of social rights.

2.3.2. Aftermath of World War-II:

The atrocities and violations of human rights that occurred during World War II galvanized worldwide opinion and made human rights a universal concern. During World War II millions of soldiers and civilians were killed or maimed. The Nazi regime in Germany created concentration camps for certain groups including laws, communists, homosexuals and political opponents. Some of these people were used as slave labour; others were exterminated in mass executions. The Japanese occupation of china and other Asian countries was marked by frequent and large scale brutality toward local populations. Japanese forces took thousands of prisoners of war who used as slave labour, with no medical treatment and inadequate food.

The promotion and protection of human rights became an allied war objective after U.S. president Roosevelt proclaimed the 'four freedoms' freedoms of speech and belief, and freedom from want and fear in 1941. The war ended in 1945, but only after the destruction of millions of lives, including through the first use of atomic weapons of Hiroshima and Nagasaki. Many countries were devastated by the war, and millions of people died or became homeless refugees.

As the war drew to close the victorious powers decided to establish a world organization that would prevent further conflict and help build a better world. This new organization was United Nations which came into being in 1945. One of the purposes of UN was to ensure the observance of human rights.

Both the World Wars of 1919 and 1939 inspired the awakening to the values of human life. The United Nations Charter is pervaded by the deep attachment of human rights. The aim of the Charter is to save the humanity from the scourge of Wars and the complete development of human personality, his liberties and scope for the same.

2.4. United Nations Charter and Human Rights:

In the preamble of the Charter it has been expressly and specifically declared that –

“We the peoples of the United Nations Determined

To save succeeding generations from the scourge of War, which twice in our life time has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small, and

To establish conditions under which justice and respect for the obligations arising from treaties and other sources of International Law can be maintained and to promote social progress and better standards of life in larger freedom, and for these ends

To practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security and

To employ international machinery for the promotion of the economic and social development of all people, have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the City of Sam Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as United Nations.

The Purposes of the United Nations as given in Article 1 of the Charter are:

1. To maintain international peace and security and to that end to take effective executive measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace;

3. To achieve international cooperation in solving international problems of an economic, social cultural, or humanitarian character, and in promoting and encouraging without distinction as to race, sex, language, or religion, respect for human rights and for fundamental freedoms for all, and

4. To be a centre for harmonizing the actions of Nations in the attainment of these common ends.

Under Article 2 of the Charter, the Organization and its members, in pursuing of the purposes stated in Article 1, shall act in accordance with the following principles :-

1. The organization is based on the principles of the Sovereign equality of all its Members.

2. All members in order to ensure to all of them the rights and benefits resulting from membership shall fulfill in good faith the obligations assumed by them in accordance with the present character.

3. All the Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered.

4. All Members shall refrain in their relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.

5. All Members shall give the United Nations every/all assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any State against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that States which are not Members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

2.5. Sum up:

Historically the decrees recorded on a clay cylinder of Cyrus, the king of Persia, in 539 B.C. are recognized as the first charter of human rights. After this the Hindu

Vedas, Hammurabi code, Bible, Quran and Analects of Confucius are considered the five of the oldest written sources of human rights. Late Magna Carta of England in 1215 in Article 39 recognized very significant human right and declared that no free person shall be made a prisoner unless such action was permissible by law. Again in England by petition of rights, 1628 and Bill of rights of 1689, rights and liberties of the subjects were ensured. The social contract writers in 17th and 18th centuries revitalized the concept of natural rights of human beings which greatly influenced the American and French revolutions. These revolutions were actually fought for the basic human rights viz. equality and liberty.

Till the 19th and the beginning of the 20th century, any attempt to enforce human rights was taken to be an attack on the concept of state sovereignty. However, there were few exceptions like slavery convention, 1926 and establishment of ILO in 1919. The covenant of League of Nations after world war-I was silent on the issue of human rights. The first attempt to universalize human rights was made by the Institute of International law by issuing a proclamation of the Rights of man in 1929. It recognized the right of every individual to life, liberty prosperity faith and religion. During world war – II all human values and dignity was negated. It was at this time that the restoration of the freedom and rights of the people was accepted as one of the essential conditions for the establishment of international peace and security. The spirit of this principle was reflected in the proclamation issued by the American president Roosevelt in 1941, which came to be known as 'Four freedoms' – Freedoms of speech and belief and freedom from want and fear. United Nations came into being in 1945 and its charter represented a significant advancement in the direction of faith in and respect for human rights.

2.6. References:

1 World Conference on Human Rights – Dr. D.B. Rao

2 Human Rights and developments in emerging world order – Sunita Samal

3 Human Rights : Theory and practice – P.K. Meena

2.7. Check your progress:

(C) Whether the statement is true or false?

1. The world first Charter of Human rights originated in Babylon.

2. ‘Vasudhav Kutumbkam’, The preaching of Vedas is based on human rights philosophy.

3. Magna Carta is not a significant document of human rights.

4. French Declaration of 1789 propagated right to life and liberty.

5. Charter of League of Nations is an advanced document of human rights.

(D) Fill in the blanks

6. Roosevelt advocated for the freedom of …………. and.................

7. ………………….and…………………were natural right theorists.

8. Petition of rights, 1628 was a declaration made by………………..

9. American Declaration of Independence, 1776 believed in a few ………………………rights.

10. U.N. charter reaffirms faith in …………………………

2.8. Answers to check your progress:

A) 1. True

2. True

3. False

4. True

5. False

B) 1. Speech and belief.

2. Locke and Rousseau

3. Parliament

4. Inalienable

5. Fundamental Human Rights

2.9. Terminal questions:

3. Discuss the origin of human rights as recognized by United Nations.

4. Describe the natural right philosophy of John Locke.

5. Analyze the roles of American and French revolutions in the development of Human Rights.

6. Throw light upon the development of human rights in the aftermath of the world wars.

UNIT-3

Universal Declaration of Human Rights

Structure:

3.1 Introduction
3.2 Historical Background
3.3 Preamble of the UDHR
3.4 Rights enumerated in the declaration
3.4.1General
3.4.2 Civil and political rights
3.4.3 Economic, social and cultural rights
3.4.4 Concluding or miscellaneous articles
3.5 Influence of the Declaration of Human Rights
3.6 Sum up
3.7 References
3.8 Check your progress
3.9 Answers to check your progress
3.10 Terminal questions

Objectives:

After going through the unit you should be able to:

- Know the historical background of UDHR. (Universal Declaration of Human Rights).
- Understand the purpose of UDHR.
- Comprehend the provisions of UDHR.
- Assess the influence and legal significance of UDHR.

3.1. Introduction:

The Guinness Book of Records describes the Universal Declaration of Human Rights as the "most translated document in the world". In the preamble governments commit themselves and their people to progressive measures which secure the universal and effective recognition and observance of the human rights set out in the declaration. Mostly people supported the adoption of the UDHR as a

declaration rather than as a treaty, because they believed that it would have the same kind of influence on global society as the US declaration of Independence had within the United States. As was expected, the UDHR has been proved to be very influential. Even though it is not legally binding, the declaration has been adopted in or has influenced most national constitutions since 1948. It has also served as the foundation for a growing number of national laws, international laws, and treaties, as well as regional, national and sub national institutions protecting and promoting human rights.

3.2. Historical Background:

With a view to implement the provisions of the U.N. Charter concerning rights, the General Assembly of the United Nations decided to prepare an international Bill on Human Rights. With a view to achieve this, the General Assembly of the United Nations requested the Economic and Social Council of January 29, 1946 to get study conducted by the Commission on Human Rights. The Commission appointed in January 1947 a drafting Committee for this purpose. At its first session held from January 9 to January 25, 1947, the Drafting Committee prepared a preliminary draft of an international Bill of Human Rights. The Human Rights Commission considered the draft at its second session held from December 2 to December 17, 1947 and found that there were divergent opinions about its contents. The commission, therefore, decided to draft a declaration of general principles simultaneously with the draft convention containing specific rights treating legally binding obligations. Along with these, it was also decided to consider the question of implementation. These three documents-(i) International Declaration of Human Rights; (ii) the International Convent on Human Rights, and (iii) Measures of Implementation – would thus form the International Bill of Human Rights. Three Working Groups were established by the Commission to prepare draft documents on the said topics. The Working Groups accordingly submitted their report to the Commission which in its turn forwarded the report of the Working Groups to the Governments of Member States of the U.N. for their comments. The said comments were then considered by the Drafting Committee in its second session held from May 3 to 21, 1948. The Drafting Committee redrafted the entire draft declaration and submitted the same to the Commission. For paucity of time the draft of the International Covenant on Human Rights could not be completed and the question of Implementation could not be considered at all. The

Commission on Human Rights considered the report of the Drafting Committee along with the draft declaration at its third session held in June 1948 and finally adopted the draft declaration of general principles and submitted the same to the Economic and Social Council which in its turn adopted a resolution relating to draft declaration without a vote and submitted it to the General Assembly.

The Universal Declaration of Human Rights was finally adopted by the General Assembly by a vote of 48 to nil with eight abstentions. The Declaration has been hailed "as an historic event of the profound significances and as one of the greatest achievement of the United Nations." The Declaration is the mine from which other conventions as well as national constitutions protecting these rights have been and are being quarried." It was a most eloquent expression of hope by a world emerging from the most devastating war in the history of human race. The experience gave the Universal Declaration a momentum that is reflected in the boldness of this document, destined for a world of peace where the right to live in peace has become a reality for all.

3.3. Preamble of the Universal Declaration of Human Rights:

One of the main reasons for the inclusion of the provisions concerning human rights in the U.N. Charter was the bitter experiences which the mankind had undergone during the First and Second World wars when large scale violations of human rights were made. That is why, the preamble of the United Nations Charter expresses the determination "to save succeeding generations from the scourge of war" which twice in our lifetime has brought untold sorrow to mankind, and "to reaffirm faith in equal rights of men and women". Thus large-scale violations of human rights during two World Wars, especially the Second World War, including the Nazi atrocities were fresh in the minds of the framers of the U.N. Charter. That is why; one of the first decisions that the General Assembly took was to prepare an International Bill of Human Rights and for this purpose asked the Economic and Social Council for a study by the Commission on Human Rights. The large scale violations of Human rights including the Nazi atrocities were also fresh in the minds of those, drafted and adopted the Universal Declaration of Human Rights. That echoes and is reflected in the wordings of the Preamble. It was also natural for the framers of the Preamble to affirm "their faith in fundamental human rights, in the dignity any worth of the human person and in the equal rights of men and women" because they considered, and rightly too, it to be the "foundation of

freedom, justice and peace in the world". It is in this context that preamble of the Universal Declaration of Human Rights is to be seen and understood which is as follows:-

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human being shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspirations of the common people.

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human beings should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relation between nations.

Whereas the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observation of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedom is of the greatest importance for the full realization of this pledge.

Now therefore,

The General Assembly proclaims the Universal Declaration of Human Rights as a common standard of achievement for all people, and of all nation, 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 respect of 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 peoples of territories under their jurisdiction.

3.4. Rights Enumerated in the Declaration:

The Universal Declaration consists of a Preamble as noted above and 30 Articles covering both civil and political rights and economic, social and cultural rights. It may be noted that the Declaration is neither addressed to nations nor to member States but to every individual. This is in keeping with the words "We the peoples of the United Nations" with which the preambles of the U.N. Charter, commences. The rights proclaimed in the Universal Declaration of Human Rights, may be classified into following four categories:

(i) General (Article 1 and 2)

(ii) Civil and Political (Articles 3 to 21)

(iii) Economic, Social and Cultural Rights (Article 22 to 27) and

(iv) Concluding (Article 28 to 30)

3.4.1. General:

Article 1 of the Universal Declaration provides that all human beings are born free and equal in dignity and rights. They are endowed with reasons and conscience and should act towards one another in a spirit of brotherhood. Article 1 thus proclaims the inherent freedom and equality in dignity and rights of all human being.

According to Article 2, everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.

Furthermore no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty.

As noted above, a remarkable thing about the Universal Declaration is that it is neither addressed to nations nor member States of the U.N. but to every individual. This is evident from Article 1 and 2 Article 29 also deserves mention in this respect.

3.4.2. Civil and Political Rights:

The civil and political rights enumerated under the Declaration include the following:

(1) Right to life, liberty and security of person; Article 3

(2) Prohibition of slavery and slavery trade; Article 4

(3) Prohibition of torture, cruel, inhuman or degrading treatment or punishment; Article 5

(4) Right to be recognized as a person before law; Article 6

(5) Equality before the law and equal protection of law against any discrimination in violation of the Declaration; Article 7

(6) Right to effective remedy by the competent national tribunals; Article 8

(7) Prohibition of arbitrary arrest, detention or exile; Article 9

(8) Right to a full equality to a fair and public hearing by an independent and impartial tribunal; Article 10

(9) Right to be presumed innocent until proved guilty according to law in public trial. Article 11, para 1.

(10) Freedom from ex-post facto laws; Article 11, para 2.

(11) Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honor or reputation and right to protection by law against such interference; Article 12

(12) Right to freedom of movement and residence within the borders of State; Article 13, para 1.

(13) Right to leave any country, including his own, and to return to his country; Article 13, para 2.

(14) Right to seek and enjoy in other countries asylum from prosecution in respect of political crimes; Article 14

(15) Right to nationality; Article 15, para 1.

(16) Freedom from arbitrary deprival of nationally and right to change nationality; Article 15, para 2.

(17) Right to marry and to found a family and equal right as to marriage, during marriage and at its dissolution; Article 16, para 1.

(18) Right to own property and freedom from arbitrary deprival of property; Article 17

(19) Right to freedom of thought, conscience and religion; Article 18

(20) Right to freedom of opinion and expression; Article 19

(21) Right to freedom of peaceful assembly and association; Article 20

(22) Right to take part in the government of this country; Article 21, para 1. and

(23) Right of equal access to public services in his country. Article 21, para1

3.4.3. Economic, Social and Cultural Rights:

Economic, Social and Cultural Rights are enumerated under the declaration include the following:

(1) Right to social security and the right to realization of the economic, social and cultural rights indispensable for indignity and the free development of his personality; Article 22

(2) Right to work, free choice of employment, just and favorable conditions of work and protection against unemployment; Article 23, para 1.

(3) Right to equal pay for equal work; Article 23, para 2.

(4) Right to just and favorable remuneration; Article 23, para 3.

(5) Right to form and to join trade Unions; Article 23, para 4.

(6) Right to rest and leisure; Article 24

(7) Right of living adequate for the health and well-being of himself and his family; Article 25, para 2.

(8) Right of all children to enjoy same social protection; Article 25, para 1.

(9) Right to education; Article 26, para 1.

(10) Right of parents to choose the kind of education of their children; Article 26, para 3.

(11) Right to participate in cultural life of the community; Article 27, para 1. and

(12) Right to protection of moral and material interests resulting from any scientific literary or artistic production of which he is the author. Article 27, para 2.

3.4.4. Concluding or Miscellaneous Articles:

Article 28 to 30 of the UDHR may be referred as concluding or miscellaneous Articles because they do not fit in any of the above three categories. For example, Article 28 provides that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. Besides this Article 29(1) is an exception because this is the only provision in the whole Declaration which speaks of duties. Article 29(1) provides that everyone has duties to the community in which alone the free and full development of his

personality is possible. However, Article 29(2) makes it clear that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Article 29(3) further provides that these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

The last article of the Declaration, namely, Article 30, incorporates a rule of interpretation or a saving clause by providing that nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

3.5 Influence of the Universal Declaration of Human Rights:

Since its adoption the Universal Declaration has exercised a powerful influence, both internationally and nationally. It has been rightly pointed out, that "Whatever its legal quality, the Declaration has set a standard by which national behavior can be measured and to which nations can aspire. The Declaration has helped to give contour and content to the generalities of the Charter reflecting the spirit and the needs of the day." Fawcett has also remarked, "The U.N. Declaration on Human Rights in 1948 was a public, and indeed a global proclamation of "a common standard of achievement for all peoples and all nations' it (i.e. The Declaration) is the mine from which other convention as well as national constitutions protecting these rights have been and are being quarried." As a result of the Universal Declaration, "The subject of human rights has fostered so much international legislation of the highest value that as legal topic it has no parallel to day. Human rights have covered a wide variety of different aspects of life ranging from genocide and prevention of discrimination to freedom of information, association, status of women, refugees, etc. Thus the subject is all embracing and in this respect no other topic can be said to have this all embracing character affecting the life of a common man.

The provisions of the Universal Declaration on Human rights are cited as justification for actions taken by the U.N. They have also inspired international conventions both within and outsides the U.N. In a large number of instances, the Universal Declaration has been used a conduit and a yardstick to measure the

degree of respect for and compliance with the international standard of human rights.

The provisions of Universal Declaration on Human Rights were transformed into international conventional law in the International Covenants on Human Rights, which along with the Universal Declaration on Human Rights are known as International Bill on Human Rights adopted by the General Assembly on December 16, 1996. Later on they were signed and ratified by large number of States. Besides this, a considerable number of other international conventions were prepared, adopted and put into effect after 1948 to implement the rights and freedoms proclaimed in the Universal Declaration on Human Rights. The preamble of those conventions often specifically refers to the Declaration or reproduces the relevant provisions of the Declaration in the text of the convention. Some of these conventions are of a worldwide character; others are of a regional or bilateral character.

In an ongoing effort based on principles contained in the Declaration, the U.N. has adopted some 50 other legal instruments on human rights. These include convention on Genocide, Slavery, Torture, Racial Discrimination, Apartheid, protection of refugees, children, discrimination against women, protection of the rights of all migrant workers and members of their families, conventions relating to Humanitarian Laws of War, etc.

The rights and freedoms enshrined in the Universal Declaration on Human Rights have been incorporated in various Declaration adopted by the U.N., such as, Declaration on the Rights of the Child (1959); Declaration on the Granting of Independence of Colonial Countries and People (1960); Declaration on the Elimination of all Forms of Racial Discrimination (1963); Declaration on Elimination of Discrimination against Women (1967); Declaration on Territorial Asylum; Declaration on Social Progress and Development (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 Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975); Declaration on the Rights of Child (1975); U.N. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981); Declaration on the Human Rights of Individual who are no Nationals of the Country in which they

live (1985); Declaration on the right to Development (1986); Vienna Declaration on Human Rights (1993); Declaration on the Elimination of Violence Against Women and (1993); Copenhagen Declaration and Programme of Action on Social Development (1995); Declaration on Terrorism.

More important than the above declarations are various International Conventions which have been influenced and inspired by the Universal Declaration on Human Rights because these conventions create legally binding obligations. example of such International Conventions are : Convention for the Suppression of the Traffic in Persons and of the Exploitation or Prostitution of others (1949); Convention on the Status of Refugees (1951); Convention on the Prevention Punishment of the Genocide (1951); Convention on the Political Rights of Women (1952); Convention on the Status of Stateless Persons (1954); Supplementary Geneva Convention for Abolishing Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); Convention on the Nationality of Married Woman; (1957); Convention on the Forced Labour (1957); Convention Concerning Discrimination in respect to Employment and Occupation (1960); Convention on the Reduction of Statelessness (1961); Convention on Consent to Minimum Age for Marriage and Registration of Marriages (1962); International Convention on the Elimination of All Forms of Racial Discrimination (1966); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Optional Protocol to the International Covenant on Civil and Political Rights (1966); Protocol Relating to the Status of Refugees (1967); International Convention on Suppression and Punishment of the Crimes of Apartheid, (1973); International Convention Against Taking of Hostages (1977); Convention on the Elimination of All Forms of Discrimination Against Women (1979); Convention Against Torture and other cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of Child, (1989); Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (1990).

The Judges of the International Court of Justice have cited to the provisions of the Universal Declaration of Human rights in a number of cases, such as, the Asylum case (Colombia v . Peru) [1950]; Anglo-Iranian Oil Co. Case, (1955); and Nottebohm case.

Regional conventions have also followed the UDHR. An important example of such regional convention is the European convention for the protection of Human

Rights and Fundamental Freedom signed at Rome on 4th November, 1950. The preamble of the European Convention proclaims that it was agreed to by the States parties "to take the first steps in the collective enforcement of certain of the rights stated in the Universal Declaration", and it contains detailed provisions on the most of the Civil and Political rights set forth in the Declaration: Indeed the European Convention on Human Rights is the first convention for the enforcement of the rights and freedoms mentioned in the Universal Declaration. Later on some other Regional Conventions, such as, European Social Charter (which was signed on October 18, 1961 and came into force on February 26, 1965), American Convention on Human rights (which was signed on November 22, 1969 and came into force on July 11, 1978), African Charter on Human and People's Rights (which was adopted on June 27, 1981 and came into force on October 21, 1986) and Arab Commission on Human Rights were concluded.

3.6 Sum up:

Universal Declaration of Human Rights has proved to be a very important and influential document on human rights. Historically on the direction of General Assembly, Economic and Social Council, through commission of human rights appointed a drafting committee to work for an International bill of human rights. The drafting committee after study and analysis adopted the general principles of the declaration and submitted it to Economic and Social Council. Finally the UDHR was adopted by the General Assembly by a vote of 48: nil with eight abstentions.

Simply UDHR declares that we are all born free and have our own thoughts and ideas and be treated equally. It covers numerous civil and political rights like right to life, liberty, equality and security etc. and economic, social and cultural rights like free development of personality, work, remuneration, education etc.

UDHR has casted wide influence, internationally and also at national level. Its provisions are cited as justification for actions of U.N. United Nations has further adopted more than fifty other legal instruments on human rights based on UDHR for example convention on Genocide, Slavery, Torture, Racial discrimination, protection of refugees, children, women etc. ICJ has also cited the provisions of UDHR. It has influenced the constitutions of Algeria, Burundi, Cameroon, Chad, Congo, Niger etc. and also judicial decisions like Keshwanand Bharti's case in India. Although UDHR is not legally binding yet it has a great moral and political

force behind it and serves as a general guide or yardstick from which the actions of people and nations are judged so far as the respect for and observance of human rights are concerned.

3.7 References:

1 International Law – S.K. Kapoor

2 International Law and Human Rights – H.O. Agarwal

3 Human rights : Theory and Practice – P.K. Meena

3.8 Check your progress:

(E) Whether the statement is true or false?

1. General Assembly appointed a drafting committee to formulate UDHR.
2. UDHR also deals with implementation of human rights.
3. UDHR ensures freedom from ex post facto laws.
4. UDHR recognizes right to equal pay for equal work.
5. UDHR is addressed to nations only.

(F) Fill in the blanks

1. Freedom from …………….and…………is the highest aspiration of common people.
2. General Assembly adopted UDHR by a vote of ……………… with eight abstentions.
3. Right to rest and leisure is one of the…………………………….
4. In 1950 the provisions of UDHR are cited by ICJ in ……………..
5. According to ………………and……………..UDHR is not a legally binding instrument.

3.9 Answers to check your progress:

C) 1. False

6. False
7. True
8. True
9. False

D) 1. Fear and want

6. 48 : nil
7. Economic, social and cultural right

8. Asylum case
9. Palmer and Perkins

3.10 Terminal questions:

1. Discuss in brief the rights enumerated in UDHR.
2. Analyze the influence of UDHR at national and International level.

UNIT-4

Two Covenants on Human Rights

Structure:

4.1. Introduction
4.2. International Covenant on civil and political rights, 1966.
4.2.1 Preamble
4.2.2 General
4.2.3 Civil and Political rights in emergency
4.2.4 Substantive civil and political rights
4.2.5 Implementation or enforcement machinery
4.2.6 Interpretation or saving provisions
4.2.7 Final or concluding provisions
4.3. International covenant on economic, social and cultural rights
4.3.1. Preamble
4.3.2. General
4.3.3. Substantive economic, social and cultural rights
4.3.4. Measures for implementation
4.3.5. Final or concluding provisions
4.4. Rights proclaimed in the universal declaration but not incorporated in the covenants
4.5. Right not proclaimed in the universal declaration but included in the covenants.
4.6. Relationship between the two covenants
4.7. Optional protocol to the International covenant on civil and political rights, 1966
4.8. Second optional protocol to the international convent on civil and political rights, 1989
4.9. Sum up
4.10. References
4.11. Check your progress
4.12. Answers to check your progress
4.13. Terminal questions

Objectives:

After going through the unit you should be able to:

- Understand the purpose of covenants of Human Rights.
- Know the rights which are guaranteed by the covenants.
- Comprehend the enforcement machinery of Human Rights.
- Establish the relation between different covenants.

4.1. Introduction:

On the recommendation of the third committee the general Assembly unanimously adopted the two international covenants on civil and political rights and on economic, social and cultural rights in 1966. The covenant on civil and political rights was adopted by 106 votes to nil while the other covenant was adopted by 105 votes to nil. The general assembly also adopted optional protocols to the international covenant on civil and political rights in 1966 and in 1989. These two international covenants, the first optional protocol and universal declaration of Human Rights are collectively known as the international bill of human rights.

4.2. International covenant on Civil and political rights, 1966:

This covenant comprises of 53 articles divided into VI parts. For convenience of study these article may be classified into following categories:

(a) Preamble

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

(c) Rights in emergency (Art 4)

(d) Substantive Rights (Arts. 6 to 27)

(e) Implementation or Enforcement Machinery (Article 28 to 45)

(f) Interpretation or Saving Provision (Arts 46 to 47)

(g) Final or concluding provisions, regarding ratification of accession of the covenant, amendments, etc.

4.2.1. 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 all instruments on human rights have been 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 foundation of freedom, justice and peace in the World," the states 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 obligation 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 a 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.

4.2.2. General (Article 1 to 3 and 5):

Articles 1 to 3 and 5 of Part 1 and Part II of the Covenant are general. Article 1 provides that all people 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 people may for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of natural benefit and international law. In no case may a person 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 provisions 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, administrative 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;

(c) to ensure that the competent authorities shall enforce such remedies when granted.

Through Article 3, the State parties to the Covenant undertake to ensure the principle of equal right of men and men 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. 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 present Covenant does not recognize such rights or that it recognize them to a lesser extent.

4.2.3. 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 Covenant, 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 situations, 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. But it is made clear that this provision will not permit the State parties to make any derogation from Article 6 (dealing with inherent right to life), 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 the 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 or international law and export facto laws), Art. 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 thereof and shall also inform the date on which such derogation is permitted.

4.2.4. 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 life (Article 6);

(ii) Prohibition of torture or cruel, inhuman or degrading treatment or punishment and prohibition of medical or scientific experimentation without free consent (Article 7);

(iii) Prohibition of slavery, slavery trade, servitude, forced or compulsory labour (Article 8);

(iv) Right to liberty and security of person and freedom from arbitrary arrest or detention (Article 9);

(v) Right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10);

(vi) Prohibition of imprisonment merely on the ground of inability to fulfill contractual obligation (Article 11);

(vii) Right to liberty of movement and freedom to choose residence and right not to be arbitrarily deprived of entering his own country (Article 12);

(viii) Freedom of aliens lawfully in the territory of a State Party to Covenant from arbitrary expulsion (Article 13);

(ix) Right to equality before the courts and tribunals; right to fair and public hearing; and right of everyone charged with a criminal offence to be presumed innocent until proved guilty according to law (Article 14);

(x) Non-retroactive application of criminal law (Article 15);

(xi) Right to be recognized everywhere as a person before the law (Article 16;

(xii) Right of everyone not to be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence and freedom from unlawful attack on his honor and reputation (Article 17);

(xiii) Freedom of thought, conscience and religion (Article 18);

(xiv) Right to freedom of opinion and expression (Article 19);

(xv) Prohibition of propaganda of war and advocacy of national, racial or religious hatred constructing incitement to discrimination, hostility or violence (Article 20);

(xvi) Right of peaceful assembly (Article 21);

(xvii) Right to freedom of association including the right to form and join trade unions for the protection of interests (Article 22);

(xviii) Right to marry and to found a family (Article 23);

(xix) Right to 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 (Article 24);

(xx) Right of every citizen to take part in 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 (Article 25);

(xxi) Equality before law (Article 26); and

(xxii) Right to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice 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 differ 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 of 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 ground 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 of public emergency. These rights and the right to life, the right not 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 fulfill a constructional 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.

4.2.5. Implementation or Enforcement Machinery (Article 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 following ways :

(i) The Reporting procedures

(ii) The Inter-State Communication system (including Conciliation Commission;

(iii) Individual's Communication system.

The last-mentioned measured of implementation, namely, individual's communication system does not find mention in the Covenant on Civil and Political Rights. It finds mention in 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 Right, 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.

4.2.6. Interpretation or Saving Provisions (Arts. 46 and 47):

Part V of the convention is comprised of Article 46 and 47 and 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 matters deal 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.

4.2.7. Final or concluding Provisions (Arts. 48 to 53):

Part VI (comprising of Article 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. As noted above, the International Covenant on Civil and Political Rights, which was adopted by the General Assembly, on December 19, 1966 came into force on January 3, 1976.

4.3. International Covenant on Economic, Social and Cultural Rights:

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 study the provisions of the Covenant may be divided into following heads:

(a) Preamble

(b) General (Article 1 to 5)

(c) Substantive Rights (Arts. 6 to 15)

(d) Measures for implementation (Articles 16 to 25)

(e) Final or Concluding Provisions (Arts 26 to 31)

4.3.1. 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 covenant is U.N. Charter provisions and Universal Declaration of Human Rights, 1948.

4.3.2. General (Article 1 to 5):

Article 1, 3 and 5 of the Covenant on Economic, Social and Cultural Rights, 1966, are also similar to Articles 1, 3 and 5 of the Covenant on Civil and Political Rights with the only difference 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 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 resource, with a view to achieving progressively the full realization 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 undertake to guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind 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 recognize 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.

4.3.3. Substantive Economic, Social and Cultural Rights:

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 (Art. 6):

(ii) Right to the enjoyment of just and favorable condition of work (Art. 7);

(iii) Right to form trade unions ad join the trade union of choice (Art. 8);

(iv) Right to social security, including social insurance (Art. 9);

(v) Right relating to family, motherhood, childhood and of young person's to protection and assistance and the right of free consent to marriage (Art.10);

(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 (Art. 11);

(vii) Right to the enjoyment of the highest attainable standard of physical and mental health (Art. 12);

(viii) Right to education-including compulsory and free primary education (Article 13);

(ix) Undertaking to implement the principle of compulsory education free of charge of all within a reasonable number of years (Article 14); and

(x) Right to (i) take part in cultural life; (ii) enjoy the benefits of scientific, progress and its application; and (iii) benefit from the protections of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Article 15).

4.3.4. 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 transit the copies of report to the Economic and Social Council. The Economic and Social Council (ECOSOC) may transmit the reports to the Commission on Human Rights for study and general recommendations. The ECOSOC may submit from time to time to the General Assembly reports with recommendations 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. Last but not the least, 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 the technical meetings for the purpose of consultation and study organized in conjunction with the governments concerned.

A perusal of the above measures shows they are weak, rather much weaker than their counterparts in the civil and political field. The obvious reason lies 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 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.

4.3.5. Final or concluding provisions (Articles 26 to 31):

Part V of the Economic Covenant (comprising of Articles 26 to 31) deals with final or concluding Articles. It deals with provisions, such as, signature, ratification, accession (Art. 26), entry into force (Art. 27), application (Art, 28), amendments (Art.29) and authentic language of the texts of the Covenant (Article 31).

Generally, the two Covenants elaborate on the rights set forth in the Universal Declaration. But there are rights which are proclaimed in the Univeral Declaration but are not incorporated in the Covenants and *vice versa* there are certain rights not proclaimed in the Universal Declaration but are incorporated in the Covenants.

4.4. Rights proclaimed in the Universal Declaration but not incorporated in the Covenants:

Rights set forth in the Declaration and not incorporated in the Covenant are the right of everyone to own property alone as well as in association with others and the prohibition of arbitrary deprivation of property, the right of every one to seek and enjoy in other countries asylum from persecution; and the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality. The covenant on civil and political rights, however affirms the right of every child to acquire a nationality.

4.5. Rights, not proclaimed in the Universal Declaration but included in the Covenants:

The most important right regulated in both the Covenants and not contained in the Universal Declaration is the 'right to people to self-determination and related

rights, including the right of peoples freely to dispose of their natural wealth and resources. While the Universal Declaration does not deal with the question of minorities, the Covenant on Civil and Political Rights provides that in those States in which ethnic, religions or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to prefer and practice their own religion or to use their own language. Owing to the fact that many provisions of the covenants are more detailed than the provisions of the Universal Declaration, the Covenants deal with aspects of matters otherwise not covered by the Universal Declaration but are not expressly mentioned in the Declaration. Whereas the Universal Declaration proclaims the right to form and to join trade unions, the regulation on the same right in Article 8 of the Covenant on Economic, Social and Cultural Rights is more detailed and specifically requires States parties to undertake to ensure the right to strike, provided that it is exercised in conformity with the law of the particular country.

4.6. 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 Preamble of both the Covenants are the same so is the case with Articles 1, 3 and 5. The preamble of the Civil Covenant recognizes the need for creation of condition wherein everyone may enjoy "his civil and political rights as well his economic, social and cultural rights." The preamble of the Economic Covenant also recognizes 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 supplementary to each other. Human rights and fundamental freedoms are indivisible. The realization of civil and political rights is impossible without the enjoyment of economic, social and cultural right. This relationship between the civil and political rights and economic, social and cultural right contained in the Civil Covenant and the Economic Covenant respectively was recognized by the International Conference on Human Rights which was held from April 2, 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. 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 rights. The Vienna Declaration adopted in the conference affirmed that all human rights are universal, indivisible, interdependent and interrelated. The international community must treat 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. 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, and their full participation in all aspects of their lives.

4.7. Optional Protocol to the International Covenant in Civil and Political Rights 1966:

It is one of the four constitutes of the International Bill on Human Rights.

The purpose of adopting the optional Protocol has been made clear in the preamble. The Preamble to the optional Protocol state that "considering" that in order further to achieve the purpose 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, communication from individuals claiming to be the victims of violations of any of the rights set forth in the Covenant, State Parties to the optional Protocol have agreed to adopt Articles 1 to 14. This is further clarified by Article 1 which says that a State party to the Covenant (i.e. the Civil Covenant) that becomes a party to the present Protocol. Recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of by that State Party of any of the rights set forth in the Covenants. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol. Article 2 further provides that subject to the provisions of

Article 1, individuals who claim that any of the rights enumerated in the Covenant has been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

The Committee then considers communications received in the light of all written information made available to it by the individual and by the State Party concerned. The Committee forwards its views to the States Party concerned and to the individual. The Committee includes in its annual report a summary of its activities under the present Protocol to the General Assembly of the U.N. through the Economic and Social Council.

The optional protocol came into force in March 23, 1976, i.e. three months after the date of the deposit with the Secretary-General of the U.N. of the tenth instrument of ratification or instrument of accession.

4.8. Second optional protocol to the International covenant on civil and political rights, 1989:

As the title of the Second Optional Protocol suggests it is mainly and exclusively aimed at or concerned with the abolition of death penalty. The parties to the Second Optional Protocol have, in the preamble, expressed the belief that "the abolition of the death penalty contributes to the enhancement of human dignity and progressive development of human rights. The second Optional Protocol elaborates, extends and interprets Article 3 of the Universal Declaration of Human Rights, 1948 and Article 6 of the Civil Covenant. Article 3 of the Universal Declaration says that "Everyone has the right to life, liberty and security of person." Article 6, Paragraph 1 of the Covenant of Civil and Political Rights, 1966, provides that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrary deprived of life. Paragraph 2 of the Article 6 further provides that in countries which have not abolished the death penalty, sentence of death may be imposed for the most serious crimes in accordance with the law at the time of the commission of the crime and not contrary to the provisions of the Civil Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. The penalty can only be carried out pursuant to a final judgment rendered by a competent court. Paragraph 5 of Article 6 further provides that sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Article 1 of the Second Optional Protocol seeks to extend the provisions by providing that no one within the jurisdiction of a State Party to the Second Optional Protocol shall be executed. Further each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction. The second Optional Protocol is so serious and sincere about achieving its aims/i.e., the abolition of Death Penalty "t", that a very limited right to reservation has been permitted. Article 2 of the Second Optional Protocol provides that no reservation is admissible to the Second Optional Protocol, except for a reservation made at the time of ratification of accession that provides for the application of death penalty in time of war pursuant to a conviction for most serious crime of a military nature committed during wartime.

The second Optional Protocol is necessary and invariably related to the International Covenant on Civil and Political Rights and the (First) Optional Protocol. The machinery for implementation, therefore, is also the same, namely, the Human Rights Commission.

4.9. Sum Up:

The international covenants on civil and political rights and on economic, social and cultural rights and also optional protocol to the International covenant on civil and political rights are the important constituents of international bill of Human Rights. Their basic purpose is to recognize that the inherent dignity and the equal and inalienable rights of all the members of the human family is the real foundation of freedom, justice and peace in the world. The International Covenant on civil and political rights generally provides to all people the very important rights of self determination and free disposal of their natural wealth and resources. By virtue of the right of self determination state parties can freely determine their political states and freely pursue their economic, social and cultural development. Further this covenant ensures numerous substantive civil and political rights for ex. Right to life security, liberty, freedom of religion, speech and assembly. Electoral rights and rights to due process and a fair trial. The international covenant on civil and political rights is monitored by the Human Rights Committee (a separate body to the UN Human Rights council), which reviews regular reports of states parties on how the rights are being implemented. State must report initially one year after acceding to the covenant and then whenever the committee requests (usually every

four years) the committee normally meets in Geneva and holds three sessions per year.

The International covenant on economic, social and cultural rights is a multilateral treaty and commits its parties to work towards the granting of economic, social and cultural rights. It works on the principle of progressive realization of labour rights, right to social security, right to family life, right to an adequate standard of living, right to health, right to free education and right to participation in the cultural life. Due to the inherent nature of these rights it is not possible to prescribe strong measures for the implementation of these rights and nor it is possible to preside time bound programme for the achievement of these rights. There are two optional protocols to the international covenant on civil and political rights. The first optional protocol is an international treaty establishing an individual complaint mechanism for the international covenant on civil and political rights. Complainant must have exhausted all domestic remedies, and anonymous complaints are not permitted. The committee must bring complaints to the attention of the relevant party, which must respond within six months. Following consideration, the committee must forward its conclusions to the party and the complainant. The second optional protocol is mainly and exclusively aimed at the abolition of death penalty. This protocol is necessarily and invariably related to the International covenant on civil and political rights. The second optional protocol commits its members to the abolition of the death penalty within their borders and allows parties to make reservations like in case of execution for grave crimes in times of war etc.

4.10. References:

(1) International Law – S.K. Kapoor, CLA, 2000.

(2) International Law and Human Rights – H.O. Agarwal, CLA, 2001.

4.11. Check Your Progress:

(A) Which of the following statements are true :

(1) Optional protocol to international covenant on civil and political rights is a constituent of international Bill of Human Rights.

(2) The International Covenant on economic, social and cultural rights works on the principle of progressive realization.

(3) The International covenant on civil and political rights provides a right of self determination.

(4) Labour rights fall within the economic rights of international covenant.

(5) Abolition of death penalty is committed by the international covenant on economic, social and cultural rights.

(B) Fill in the blanks

1. Second optional protocol to international covenant on civil and political rights was adopted in ……………………

2. The enforcement machinery of international covenant on civil and political rights is provided under part……………..of the covenant.

3. There are……………………..articles in the international covenant on civil and political rights.

4. The common sources of both the covenants are…………………… and ………………..

5. The economic, social and cultural rights……………………..from country to country.

4.12. Answers to check your progress:

(A) 1. True

2. True

3. True

4. True

5. False

(B) 1. 1989

2. IV

3. 53

4. UN charter and UDHR

5. Differ

4.13. Terminal Questions:

1. Enumerate the substantive civil and political rights provided by the International covenant on civil and political rights.

2. Discuss the principle of 'progressive realization' within the international covenant of economic, social and cultural rights.

3. Analyze the Human Rights enforcement machinery of international covenants on Human Rights.

UNIT-5

International Human Rights Protection Bodies

Structure:

5.1. Introduction
5.2. Human Rights protection bodies and state sovereignty
5.3. Principal UN organs
5.3.1. The security council
5.3.2. Office of the Secretary General
5.3.3. The General Assembly
5.3.4. The Economic and Social Council
5.3.5. The International Court of Justice
5.4. Major subsidiary organs
5.4.1. The Human Rights Commission
5.4.2. International Labour Organization
5.4.3. The High Commissioner for refugees
5.5. Covenant specific bodies
5.5.1. The Human Rights Committee
5.5.2. The Committee on Economic Social and Cultural Rights
5.6. Other treaty based mechanisms
5.7. Sum up
5.8. References
5.9. Check your progress
5.10. Answers to check your progress
5.11. Terminal questions

Objectives:

After going through the unit you should be able to:

- Know that there are numerous, international bodies, entrusted with the task of Human Rights protection.

- Understand that these bodies lack in action due to issues like state sovereignty etc.
- Comprehend that global enforcement of human rights is a rare event.

5.1. Introduction:

The new human rights goals were proclaimed in 1945 and many human rights treaties were subsequently adopted. But apparently one was to rely mostly on traditional diplomacy, grounded in state sovereignty, to realize them. This meant that realist principles of state interest loomed large. The evolving process for applying universal human rights standards on a global basis are examined here.

International law has traditionally been clearer about "What?" than "Whom?" The law has emphasized what legal rules apply in different situations. It has frequently not explicitly addressed who is authorized to make authoritative judgments about legal compliance. By default this means that states remain judge and jury in conflicts involving themselves a principle accepted by no well-ordered society. Certainly the global law on human rights and humanitarian affairs has been characterized by decentralized decision making leading to much ambiguity about compliance. "Most states, in negotiating human rights agreements, do not want authoritative international means of protection." Many states have asserted an apparently liberal commitment to internationally recognized human rights. But most states have elevated national independence, particularly the supremacy of national policy making, over the realization of universal human rights.

5.2. Human Rights Protection bodies and State sovereignty:

At International level there are numerous bodies which have been entrusted with the task of protection of human rights but enforcement of human rights has remained a rare event. The important bodies include principal UN organs, major subsidiary bodies, covenant specific bodies and other treaty based mechanisms.

The present scenario is that while direct international protection or enforcement of human rights is mostly absent, attempts at indirect international implementation of human rights are frequently present. There still is no world government to systematically override state sovereignty. But there are arrangements for global governance to restrict and redefine state sovereignty.

State sovereignty is not likely to disappear from world affairs any time soon, but it is being restricted and revised in a continuing and complex process. Human rights

norms are at the core of this evolution. States may use their sovereignty to restrict their sovereignty in the name of human rights. In general, the importance of internationally recognized human rights is increasing, and the value placed on full national independence decreasing. This pattern is more evident, with some exceptions, in the global north than the global south. Again in general, but again with some exceptions, moral interdependence accompanies material interdependence albeit with a time lag. Liberalism is relatively more important in international relations than it used to be.

5.3. Principal UN organs:

5.3.1. The Security Council:

A fair reading of the UN Charter, as it was drawn up in 1945, indicates that the Security Council was given primary responsibility for the maintenance of international peace and security, which meant issue of peace and war. On security issues the Council could take legally binding decisions under Chapter VII of the Charter pertaining to enforcement action. In addition, there were economic, social, cultural, and humanitarian issues. On these issues the Council, like the General Assembly, could make recommendations under Chapter VI. Presumably human rights fell into one of the categories other than security such as social or humanitarian. But the Council was authorized by the Charter to take action to remove threats to the peace. Logically, threats to the peace could arise from violations of human rights. In political fact, early in the life of the Security Council some states did attempt to bring human rights issues before it, precisely on grounds of a relationship to security. The early Council responded to these human rights issues in an inconsistent fashion, being greatly affected by the Cold War. From about 1960 to the end of the Cold War, the Council began to deal more systematically with human rights issues as linked to four subjects: racism giving rise to violence especially in southern Africa; human rights in armed conflict; armed intervention across international boundaries; and armed supervision of elections and plebiscites. During this era the Council sometimes asserted a link between human rights issues and transnational violence.

After the cold war this council thus expanded the range of Chapter VII enforcement action and stated, much more often compared with the past, that human rights violations were linked to international peace and security, thus

permitting invocation of Chapter VII and even leading to an occasional enforcement action.

Five summary points deserve emphasis. Firstly, there were numerous situations of violence in world affairs around the close of the Cold War; the UN Security Council did not address all of them. Vicious wars in places like Chechnya, Sri Lanka and Algeria never drew systematic Council attention, much less bold assertions of international authority. Realist principles still mattered; if major states, especially the United States, did not see their narrow interests threatened, or believed a conflict resided in another's sphere of influence, the Council might not be activated. Secondly, on occasion the Council has continued to say that human rights violations inside states can threaten international peace and security, at least implying the possibility of enforcement action under Chapter VII to correct the violations. In early 1992 a Council summit meeting of heads of state issued a very expansive statement indicating that threats to security could arise from economic, ecological, and social causes, not just traditional military ones. Thirdly, the Council sometimes made bold pronouncements on behalf of Council authority, but then proceeded to seek extensive consent from the parties to a conflict. Sometimes, as in dealing with Iraq in the spring of 1991, there were enough votes in the council to declare the consequences of repression a matter that threatened international peace and security, but not enough votes to proceed to an explicit authorization to take collective action. Sometimes, as in dealing with Somalia during 1992-1994, or Cambodia 1993-1996, or Bosnia in 1992-1995, the Council would adopt a bold stand in New York, asserting broad international authority, but in the field UN officials made every effort to obtain local consent for what the Council had mandated. Fourthly, the Council has frequently deployed lightly armed forces in "peacekeeping operations" under Chapter VI, with the consent of the parties, to help ensure not just simple peace based on the constellation of military forces, but a more complex liberal democratic peace based on civil and political rights. Fifthly, the Council has asserted the authority under Chapter VII to create ad hoc criminal courts, to prosecute and try those engaging in war crimes, crimes against humanity, and genocide. In this last regard the Council has asserted that all member states of the UN are legally obligated to cooperate with the ad hoc courts in order to pursue those who have committed certain gross violations of internationally recognized human rights.

The Security Council, no longer paralyzed by Cold War divisions, responded in various ways to : repression, oppression, and civil war in El Salvador from 1990; attacks by the Iraqi government on Iraqi Kurds and Shi'ites in the spring of 1991; systematic rape, ethnic cleansing, and other gross violations of human rights in the former Yugoslavia from 1992 to 1995; widespread malnutrition and starvation in Somalia during 1992-1994; the absence of liberal democracy and political stability in Cambodia during 1991-1997; the absence of liberal democracy and economic well-being in Haiti during 1993-1996; ethnic violence constituting genocide in Rwanda from 1994; and a long-running low-intensity conflict in Guatemala from 1996. The Council also paid attention to murderous wars in places like Angola and Mozambique during this same era.

With due respect to the complexity of internationalized internal wars in places like Angola and El Salvador, nevertheless the most striking feature about Security Council action in the 1990s was its willingness to deal with conflicts whose origins and most fundamental issues were essentially national rather than international. In El Salvador, Iraq, Somalia, Cambodia, Haiti, Rwanda, Guatemala, Liberia, Angola, and Mozambique, the central issues of conflict revolved around "who governs" and "how humanely". "Who governs" raises the question of the presence of absence of democracy and more importantly of liberal democracy. Are there free and fair national elections, with freedom of belief, speech, and association? Is the internationally recognized right to political participation respected? "How humanely" raises a host of other questions about respect for all the other internally recognized human rights.

Despite the inconsistency some improvements were achieved. El Salvador and Namibia were clearly more humane places after extensive UN involvement, especially when compared with the preceding decade. Haiti, Mozambique and Guatemala eventually stumbled toward improved respect for many human rights. If the Council could help conflicting parties move toward accommodation and humane governance through Chapter VI peacekeeping, which did not entail large-scale combat or other costly enforcement measures, then its record was commendable in many respects. The UN spent more than $2 billion in trying to advance liberal democracy in Cambodia, and some improvements-however incomplete were made.

The overall record of the Council on human rights issues After the Cold War was complex. Clearly the Council has been extensively involved in trying to help apply

human rights standards than ever before. It has demonstrated on a number of occasions that human rights protections could be intertwined with considerations of peace and security. It has certainly blurred the outer boundaries of state sovereignty and its corollary, domestic jurisdiction.

5.3.2. Office of the Secretary-General:

On the one hand, as human rights have become more institutionalized in UN affairs, Secretaries-General have spoken out more frequently and been generally more active in this domain. There is almost a straight line progression or increasing action by Secretaries-General on human rights over time. Secondly, while all Secretaries-General have given priority to trying to resolve issues of international peace and security, increasingly they have found human rights intertwined with security. In so far as security issues can be separated from human rights, rights issues tended to be either down-graded or dealt with by quiet diplomacy. In contemporary times, with human rights increasingly institutionalized within the UN and meshed with many security concerns, a Secretary-General like Kofi Annan has been more willing to take firm stands for the protection of human rights.

From the earliest days of the UN there were Secretariat officials active in the promotion of human rights through setting of standards, even if they were not able to achieve a great deal in specific protection efforts. At the highest level, however, neither Trygve Lie nor Dag Hammarskjold showed much direct and clear interest in internationally recognized human rights. During the Cold War, forthright and public stands on any major issue were likely to make any Secretary-General persona non grata to one coalition or the other.

After U Thant, a transitional figure for present purposes, both Kurt Waldheim and Perez de Cuellar showed relatively more interest in the protection of human rights. Particularly in dealing with Central America, de Cuellar came to realize that peace and security in places like Nicaragua and El Salvador depended on progress in human rights. He therefore helped arrange deeply intrusive rights agreements, especially in El Salvador, and persistently acted to rein in death squads and other gross violators of human rights through his mediation and other diplomatic actions. By the end of his second term, de Cuellar held quite different views on the importance of human rights, compared with when he entered office.

Boutros-Ghali was the most outspoken Secretary-General on human rights up to that time, making a strong case in particular for democracy. His Agenda for Development strongly advocated democratic development, based on civil and

political rights, at a time when the General Assembly and the World Bank were, less than clear in their support for civil and political rights. He thus sought to correct what had been a major deficiency in human rights programming at the UN, the lack of integration between human rights and development activities.

In sum, the office of the Secretary-General represented the purposes of the organization as found in the Charter. Among these purposes was international cooperation on human rights. Yet most decisions taken in the name of the UN were taken by states, and the Secretary-General, while independent, was also given instructions by states acting collectively through UN organs. Moreover, he could only be effective when he retained the confidence of the more important states. Thus there was room for action on human rights, which Secretaries-General had progressively exercised as human rights became more and more a regular part of international and UN affairs. The Secretary-General's protective action, beyond promotional activities, consisted mostly of reasoning in quiet diplomacy. But there were also major constraints imposed by states-such as lack of real commitment to international human rights, lack of consensus of priorities, and lack of adequate funding.

5.3.3. The General Assembly:

The UN General Assembly has been instrumental in the promotion of human rights, approving some two dozen treaties and adopting a number of "motherhood" resolutions endorsing various rights in general. The Assembly has played a much less important role in the protection of specific human rights in specific situations, although much ambiguity inheres in this subject.

One can take a minimalist approach and note that the General Assembly did not try to reverse certain decisions taken in the Economic and Social Council (ECOSOC) and the UN Human Rights Commission that were directed to specific protection attempts. Furthermore, since many of the treaty monitoring mechanisms report to the Assembly, the same can be said for the Assembly's review of those bodies. More optimistically, after the Cold War as before, the Assembly adopted a number of specific resolutions condemning human rights violations in various countries. During the Cold War, it is likely that repeated Assembly condemnation of Israeli and South African policies had little immediate remedial effect on those two target states, as they viewed the Assembly as inherently biased against them. This was certainly the case when the Assembly declared Zionism to be a form of racism, a resolution eventually rescinded. It is possible that repeated Assembly attacks on

apartheid policies in South Africa contributed to an international normative climate in which powerful states eventually brought pressure to bear on racist South Africa. How ideas as expressed in Assembly resolutions affect states' definitions of their national interests remains a murky matter. In any event the Assembly shrank the realm of state sovereignty by demonstrating clearly that diplomatic discussion of specific human rights situations in specific countries was indeed part of routinized international relations, even if the Assembly displayed a tendency to adopt paper solutions to complex and controversial subjects.

5.3.4. The Economic and Social Council (ECOSOC):

ECOSOC, officially one of the UN's principal organs, very rapidly became little more than a mailbox between the Assembly and various bodies subsidiary to ECOSOC, transmitting or reaffirming instructions from the Assembly to a proliferation of social and economic agencies. ECOSOC is not, and has never been, a major actor for human rights. The states elected to ECOSOC have taken three decisions of importance since 1945, one essentially negative and two positive. Firstly, ECOSOC decided that the members of the UN Human Rights Commission should be state representatives and not independent expert. This decision put the foxes inside the hen house. Later ECOSOC adopted its resolution 1235, permitting the Commission to take up specific complaints about specific countries. Resolution 1503 was also eventually adopted, permitting the Commission to deal with private petitions indicating a systematic pattern of gross violations of internationally recognized human rights.

In addition, ECOSOC maintains a committee that decides which non-governmental organizations (NGOs) will be given which category of consultative status with the UN system. The highest status allows NGOs to attend UN meetings and submit documents. Both before and after the Cold War, this committee was the scene of various struggles over human rights NGOs. Certain states that were defensive about human rights matters tried, with periodic success, to deny full status, or sometimes any status, to legitimate human rights NGOs. These problems diminished by the end of the twentieth century.

5.3.5. The International Court of Justice (ICJ):

The International Court of Justice (ICJ), technically a principal UN organ but highly independent once its judges are elected by the Security Council and General Assembly, has not made a major imprint on the protection of international human rights. This is primarily because only states have standing before the Court, and

states have demonstrated for a long time a reluctance to either sue or be sued – especially on human rights-in international tribunals. Without allowing individuals legal standing, the ICJ's case load on human rights in likely to remain light.

From time to time the Court is presented with the opportunity to rule on issues of international human rights and humanitarian law. In 1986 in ***Nicaragua v. the United State*** it reaffirmed some legal protection in armed conflicts. In 1995 it issued some interim injunctions about genocide in the former Yugoslavia. But in general, while the ICJ's case load has increased on average from two to three cases per year to ten to eleven after the Cold War, it is still rare for the Court to make a major pronouncement on human rights. States still generally regard human rights as too important a subject to entrust to some fifteen independent judges of various nationalities who make their judgments with reference to rules of law rather than national interests or public opinion. Thus, for example, while the 1948 Genocide Convention contains an article providing for compulsory jurisdiction for the ICJ in resolving disputes under this treaty, states like the USA reserved against this article when ratifying the treaty.

5.4. Major subsidiary bodies:

In addition to the principal UN organs, there are several subsidiary bodies that concern themselves with the application of human rights standards. The focus here is on the Human Rights Commission, the International Labor Organization, and the Office of the UN High Commissioner for Refugees. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has also been active. The Commission on the Status of Women has been primarily engaged in promotional and assistance activities rather than protection efforts.

5.4.1. The Human Rights Commission:

It used to be said of the UN Human Rights Commission that it was the organization's premier body, or diplomatic hub, for human rights issues. After the Cold War this is no longer completely the case. If the Security Council establishes a connection between human rights and international peace and security, then the Council becomes the most important UN forum for human rights-as demonstrated above. What can be said is that the Commission remains the center for traditional or routine human rights diplomacy, in addition to the Secretary-General's office, and in loose tandem with the UN High Commissioner for Human Rights. The UN

system has never been known for tight organization and streamlined, clear chains of command.

The Commission for Human Rights was anticipated from the very beginning of the UN and first served as a technical drafting body for the International Bill of Rights and other international instruments on human rights. It is composed of representatives of states, elected by ECOSOC, itself composed of states. Because of its composition as well as its focus on drafting legal standards, for its first twenty years the Commission avoided specific inquires about specific rights in specific countries. In one wonderful phrase, it demonstrated a "fierce commitment to inoffensiveness." Contributing to this situation was the fact that both the East and West during the Cold War knew that if they raised specific human rights issues, such inquiries could be turned against them. The West controlled the Commission in its early days, but its own record on racism and discrimination suggested prudence in the face of any desire to hammer the communists on their evident violations of civil and political rights.

Beginning in about 1967 the Commission began to stumble toward more protection activities rather than just promotional ones. This change was made possible primarily by the greater number of developing countries in the organization. They were determined to do something about racism in southern Africa and what they saw as neo imperialism and racism via the Zionist movement in the Middle East. They did not apparently anticipate how a focus on specific rights in specific places could also be turned against them in the future. Some western governments, pushed by western-based non-governmental organizations, then struck a deal with the developing countries in the newly expanded ECOSOC and Commission, agreeing to debates about Israel and South Africa in return for similar attention to countries like Haiti and Greece, both then under authoritarian government. The door was opened for attempts under the Charter to monitor and supervise all state behavior relative to international rights standards.

ECOSOC's Resolutions 1235 and 1503, mentioned above, authorized specific review of state behavior on rights, and a Commission response to private petitions alleging a pattern of gross violations of rights, respectively. In theory, both procedures represented a constriction of absolute and expansive state sovereignty. In practice, neither procedure resulted in systematic, sure, and impressive protections of specific rights for specific persons in specific countries. Lawyers sometimes got excited about the new procedures, but victims of rights violations

were much less impressed. Mostly because of the 1235 procedure, allowing a debate and resolutions on particular states, the Commission sometimes appointed country investigators, by whatever name, to continue investigations and keep the diplomatic spotlight on certain states, thus continuing the politics of embarrassment. This step, too, while sometimes bringing some limited improvement to a rights situation, failed to provide systematic and sure protection. The 1503 procedure, triggered by NGOs as well as by individuals, took too long to transpire and was mostly shielded from publicity by its confidential nature. Somewhat more effective was the Commission's use of thematic investigators or working groups, such as on forced disappearances. These developed the techniques of "urgent action" and "prompt intervention." The Commission also started the practice of emergency sessions. Yet if at the end of emergency sessions and reports by the country, thematic, or emergency investigators, member states were not prepared to take further action, Commission proceedings still failed to generate the necessary impact on violating states.

Summarizing the protective role of the Commission has never been easy. If one looks at what transpires inside Commission meetings, there has been clear progress since 1947, and particularly since 1967, in attempts by this UN agency to pressure states into complying with internationally recognized human rights. States mostly take Commission proceedings seriously. They do not like to have the Commission focus on their deficiencies. Many go to great efforts to block, delay, or weaken criticism by the Commission and its agents. This was true, for example, of Argentina in the 1980s and China in the 1990s. Despite these obstructionist efforts, a fairly balanced list of states has been publicly put in the diplomatic dock via the Commission. But if one looks at what transpires outside the Commission, it is clear that many states are prepared to continue with right violations, even if this brings various forms of criticism and condemnation.

5.4.2. International Labor Organization (ILO):

The ILO has long been concerned with labor rights, first as a parallel organization to the League of Nations, then as a specialized agency of the UN system. It has developed several complicated procedures for monitoring state behavior in the area of labor rights. In general, certain differences aside, its record on helping apply international labor rights is similar to that of the UN Human Rights Commission in two respects : it proceeds according to indirect implementation efforts falling short of direct enforcement; and its exact influence is difficult to specify.

Of the more than 170 treaties developed through and supervised by the ILO, a handful are considered oriented toward basic human rights such as the freedom to associate in trade unions, the freedom to bargain collectively, and the right to be free from forced labor. States consenting to these treaties are obligated to submit reports to the ILO, indicating steps they have taken to apply treaty provisions. These reports are reviewed first by a committee of experts, then by a larger and more political body. Specialized ILO secretariat personnel assist the review committees. At both stages, workers' organizations participate actively. Other participants come from owners' organizations, and states. This tripartite membership of the ILO at least reduces or delays some of the problems inherent in the UN Human Rights Commission, such as states' political obstruction that makes serious review difficult. Nevertheless, at the end of the day the ILO regular review process centers on polite if persistent diplomacy devoid of more stringent sanctions beyond public criticism. Some issues remain under review for years. States may not enjoy multilateral criticism, but they learn to live with it as the price of continued political power or economic transactions.

All member states of the ILO are subject to a special review procedure on the key subject of freedom of association, regardless of their consent to various ILO treaties. Despite procedural differences, the outcome of these special procedures is not very different from the regular review. Workers' organizations are more active than owner and state representatives, and public criticism of state malfeasance must be repeated because amelioration comes slowly. Indeed, a study of freedom of association and the ILO during the Cold War concluded that those states most violative of freedom of association were also most resistant to ILO pressures for change. There are procedures for "urgent cases", but these sometimes take months to unfold.

There are still further actions the ILO can take in defense of labor rights, such as sending special representatives of the Director-General for contact with offending governments. Moreover, the ILO is not the only UN agency concerned with labor rights. UNICEF, for example is much concerned with child labor, arguing in early 1997 that some 250 million child laborers were being harshly exploited.

5.4.3. The High Commissioner for Refugees:

After World War II, such was the naivety of the international community that it was thought that the problem of refugees was a small residue of that war and would be cleared up rather quickly. Over half a century later, refugees as defined in

international law numbered about 13-15 million each year, perhaps another 25 million persons found themselves in a refugee-like situation, and the UN Office of the High Commissioner for Refugees (UNHCR) had become a permanent organization.

International law provided for legal refugees-those individuals crossing an international boundary on the basis of a well-founded fear of persecution (also called social, political or convention refugees). Such persons had the legal right not to be returned to a threatening situation, and thus were to be granted at least temporary asylum in states of first sanctuary. But in addition, many persons fled disorder without being individually singled out for persecution, and others found them displaced but still within their country of habitual residence. Others needed international protection after returning to their original state. After the Cold War, virtually all of the traditional states of asylum, historically speaking, adopted more restrictive policies regarding refugees and asylum. Being protective of traditional national values and numbers, these western states feared being overwhelmed with outsiders in an era of easier transportation.

The UNHCR started out primarily as a protective agency that sought to represent legal refugees diplomatically and legally. States retained final authority as to who was recognized as a legal refugee, and who was to be granted temporary or permanent entrance to the country. Thus the early role of the UNHCR was primarily to contact states' legal authorities and/or foreign ministries on behalf of those exiles with a well-founded fear of persecution. Increasingly the UNHCR was drawn into the relief business, to the extent that some observers believed it was no longer able to adequately protect refugees because its time, personnel, and budgets were consumed by relief operations. In its relief, the UNHCR felt compelled by moral concerns to disregard most distinctions among legal refugees, war refugees, and internally displaced persons. They were all in humanitarian need. This approach was approved by the General Assembly. Given that repatriation rather than resettlement became increasingly the only hope for a durable solution to refugee problems, the UNHCR increasingly addressed itself to the human rights problems causing flight in the first place. Thus the UNHCR became less and less a strictly humanitarian actor, and more and more a human rights actor dealing with the root causes of refugee problems.

Despite some evidence of accounting and other mismanagement, the UNHCR has remained one of the more respected UN agencies. It has became one of the more important UN relief agencies.

5.5. Treaty-specific bodies:

The United Nations is a decentralized and poorly coordinated system. Since states are unwilling thus far to create a human rights court to coordinate the protection of internationally recognized human rights, each human rights treaty provides its own monitoring mechanism. States keep adopting human rights standards, but avoiding the hard issue of effective enforcement. The result is a proliferation of weak implementation agencies and a further lack of coordination. The heads of the treaty monitoring mechanisms, however, have started meeting together to exchange views.

5.5.1. The Human Rights Committee:

The International Covenant on Civil and Political Rights, provides for a Human Rights Committee with two basic protective functions. Composed of individual experts nominated and elected by states that are party to the Covenant, the Committee reviews and comments on obligatory state reports. The Committee also processes individual petitions alleging violations of rights under the Covenant, from those states consenting to an optional protocol.

States report on measures they have taken to make national law and practice compatible with their obligations under the Covenant. The Committee, however, was divided during the Cold War on its proper role. A minimalist view, articulated mostly by individuals from the European socialist states, maintained that the Committee was only to facilitate dialogue among sovereign states. A maximalist view was that the Committee was to pronounce both on whether a state had reported correctly, and on whether that state was in compliance with its legal obligations. Since the end of the Cold War the Committee has been more free to adopt the maximalist view. But once again we see that the Committee could not proceed beyond some public criticism of the states that were found to be wanting in one respect or another via their reports. Some states, mostly western democracies did make changes in their national law and practice in the wake of Committee questions.

5.5.2. The Committee on Economic, Social and Cultural Rights:

The International Covenant on Economic, Social, and Cultural Rights, has always been the step-child of the international human rights movements.

After the E/S/C Covenant came into legal force in 1976, it took a full two years for any monitoring mechanism to be put in place. This first body, a working group of states derived from ECOSOC, complied of a truly miserable record of incompetence and was replaced in 1986 by an independent Committee of Experts. This Committee has shown considerable dynamism in confronting some daunting tasks: imprecision of the Covenant's terms; lack of jurisprudence to clarify obligations; lack of broad and sustained governmental interest in the subject matter' paucity of national and transnational private organizations interested in socio-economic and cultural rights as rights and not as aspects of development; and lack of, inter alia, relevant information for arriving at judgments.

The Committee has struggled first with the problem of states' failing to submit even an initial report on compliance, although legally required. This problem is widespread across the UN system of human rights reporting, but it is a pronounced problem under this Covenant. It has also faced the usual problem that many states' reports, even when submitted, are more designed to meet formal obligations than to give a full and frank picture of the true situation of E/S/C rights in the country. The Committee has persisted in trying to serve as an effective catalyst for serious national policy making in this domain, and has tried mostly to establish minimum base lines for national requirements-rather than universal rules-regarding economic, social, and cultural rights.

5.6. Other Treaty Based Mechanisms:

Control committee exists under conventions on the Right of the Child Racial Discrimination, Torture, Discrimination against Women, and Apartheid. State endorsement of international human rights in –these areas is generally not matched by timely and fulsome reporting by the state, nor by a willingness to respond affirmatively and quickly to critical comments by the control committees-which are composed of individual experts. As with other human rights treaties discussed above, UN secretariat assistance is meager owing to budgetary problems. Some NGOs do give special attention to one or more of these treaties. For example, Amnesty International gives considerable support to the Committee against Torture. But the Committee against Racial Discrimination has adopted restrictive decisions about the use of NGO information, as has the Committee on

Discrimination against Women. This latter Committee operates under a treaty that does not allow individual petitions, in part because the UN Commission on the Status of Women does. The Committee dealing with apartheid has faced few private petitions, because most state parties from outside Europe have not given their consent for them to be lodged. Most of these treaties contain a provision on interstate complaints, but these provisions have remained dormant. States do not like to petition other states about human rights, because of the boomerang effect on themselves. The Committee against Torture exercises a right of automatic investigation unless a state expressly reserves against that article; relatively few parties have. There has been some effort to improve the coordination of all of these treaty-based monitoring mechanisms, but one cannot yet discern any greater influence in the short term generated by the sum of the parts, or the separate parts themselves.

In general, the regimes that center on these human rights treaties and their monitoring mechanism constitute weak regimes that have not been able to make a significant dent thus far in violations of various human rights on a global scale. The control committees do make their contribution to long-term promotion via socialization or informal and practical education for human rights. States have to report and subject themselves to various forms of review.

5.7. Sum up:

At international level there are numerous bodies which have been entrusted with the task of protection of human rights but enforcement of them is rare due to certain factors like state sovereignty etc. The important international bodies which are responsible for human rights protection include principle UN organs, are responsible for human rights protection include principle UN organs, major subsidiary bodies like Human Rights commission and ILO, International covenant specific bodies and other treaty based mechanism.

The Security Council, office of the secretary general, the general assembly the economic and social council and ICJ are the major UN organs which have been working for the protection of Human rights. After the cold war, the Security Council has asserted that human right violations are linked to international peace and security and implied the possibility of enforcement action under chapter VII (UN charter) to correct the violations. The council has frequently deployed lightly armed forces in peace keeping operations under the chapter VI. The office of

secretary general has also been concerned with the human right violations and secretary general like Kofi Annan has been more willing to take firm stands. The UN General assembly has been instrumental in the promotion of human rights, approving some dozen treaties and adopting a number of 'motherhood' resolutions endorsing various rights in general. ECOSOC has never been a major actor for human rights. The ICJ has not made a major imprint on the protection of human rights as only states have standing before the court.

Several subsidiary bodies of UN like the Human rights commission, ILO and the high commissioner of refugees are also working for protection of human rights. Within the meetings, the Human rights commission has progressed as it can pressurize the states to comply with human rights standards. ILO monitors state behavior in the area of labour. It freed according to indirect implementation efforts killing short of direct enforcement and its exact influence in difficult to specify. The UNHCR has gradually become a human right actor dealing with the root causes of refugee problems.

The Human rights committee of International covenant on civil and political rights performs important tasks. It reviews and comments on obligatory states reports. It also processes individual petition violations of human rights under the covenant. The committee on economic, social and cultural rights under the ICESCR has persisted in trying to serve as an effective catalyst for serious policy making in the domain of economic, social and cultural rights.

There are also control committees existing under conventions on the rights of child, Racial discrimination, Torture etc. which are dormant in their working and have not been able to make a significant dent thus for in violations of human rights at global level.

5.8. References:

1. Universal Human Rights in Theory and practice – Jack Donnelly, CUP, 1989.

2. Human Rights theory and practice –P.K. Meena.

5.9. Check your progress:

A. Which of the following statements are true :

1. After cold war the Security Council has linked human rights violations to international peace and security.

2. The office of UN secretary general has integrated the human rights and development activities.

3. The Economic and social council has proved to be a major actor for human rights.

4. The ICJ could not make a major imprint on the protection of human rights as only states have standing before the court.

5. The ILO has monitored state behavior mainly in the area of refugee rights

B. Fill in the blanks

1. Though not intended, UN office of the……………………has become a permanent organization.

2. The Human rights committee of ICCPR, processes individual petitions of human right violations from states consenting to an ……………………….

3. ……………………committee exists under convention on the Rights of the child.

4. Due to moral concerns UNHCR has disregarded most distinctions between…………………refugees and………………..persons.

5. Generally…………………is not overridden in the name of human rights violations.

5.10. Answers to check your progress:

A) 1. True

2. True

3. False

4. True

5. False

B) 1. High Commissioner for refugees

2. Optional protocol

3. Control

4. War, legal and internally displaced

5. State sovereignty

5.11. Terminal questions :

1. Evaluate the working of the Security Council and General Assembly as human rights protector.

2. Discuss the contribution of ILO in the protection of human rights.
3. Analyze the working of Human Rights committee.

UNIT-6

Role of International Court of Justice and International Criminal court in the Protection of Human Rights

Structure:

6.1. Introduction
6.2. ICJ and Human Rights
6.3. Important Human Rights cases
6.4. International Criminal Court
6.5. Trials in ICC
6.6. Crimes within the jurisdiction of the Court
6.7. Protection of HR under ICC
6.7.1. Right of the accused
6.7.2. Victim participation and reparations
6.7.2.1. Participation of Victims in proceedings
6.7.2.2. Reparations of victims
6.7.3. Right of accused
6.7.4. Problems of International Criminal Proceedings
6.8. Sum up
6.9. References
6.10. Check your progress
6.11. Answers to check your progress
6.12. Terminal questions

Objectives:

After going through the unit you should be able to:

- Know the case in which ICJ has shown concern towards Human Rights.
- Understand that ICJ has limitations.
- Comprehend that ICC is quite empowered to work for human rights but its working is to be seen.

6.1. Introduction:

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations but has not been much effective in the area of human rights recognition and protection. In fact only states can appear before the court. The ICJ has no jurisdiction to deal with applications of human rights violations from individual, nongovernmental organizations, corporation or any other private entity. On the other hand in comparison to ICJ, international criminal court (ICC) is empowered. Initially Human Rights watch observed that the ICC has one of the most extensive lists of due process guarantees ever written. There are limitations to ICC also. Its working is still to be seen but it is being accused of bias. It is being said that ICC is a tool of western imperialism and only punishing leaders from small, weak nations while ignoring crimes committed by richer and more powerful nations.

6.2. ICJ and Human Rights:

The ICJ is not a court for human rights. Article 34 of the statute of the court provides that only states may be parties in cases before the court.

The principle that only States have standing before international tribunals has long since been modified. But it continues to govern the World Court and will do so unless and until its Statute is amended.

Sir Hersch Lauterpcht has proposed an amendment of Article 34 to provide:

"The Court shall have jurisdiction:

(1) In disputes between States;

(2) In disputes between States and private and public bodies or private individuals in cases in which States have consented in advance or by special agreement to appear as defendants before the Court."

But there appears no disposition among the States to consider or to amend the Statute of the Court to make such provision.

It is a true statement that the question of Human Rights has appeared in many cases before the Court and in some of them the Court has rendered judgments or given advisory opinions which have significantly influenced international law bearing on human rights.

6.3. Important Human Rights Cases:

An earlier advisory opinion of the ***ICJ is on Reservation to the Convention on the Prevention and Punishment of the Crime of Genocide, (1950)*** related to the

making of reservations to treaties. The Court declared when giving its opinion on this question that the United Nations had intended to condemn and punish Genocide as a crime under international law, involving a denial of the right of existence to entire human group which being contrary to moral law and the spirit and aims of the United Nations, shocks the conscience of mankind and results in great losses to humanity.

In such a convention the contracting States have none of their own interests. They all have merely a common interest viz., the accomplishment of the high purposes which form the raison d'etre of the convention.

In doing so the Court recognized Genocide as supremely unlawful under international law, customary as well as conventional system which continued to cast its shadow on its subsequent holdings on international obligations.

In the advisory opinion on the ***International Status of South West Africa (1951)*** the Court held that as a result of resolution adopted by the Council of the League of Nations in 1923, the inhabitants of the mandated territories acquired the international right of petition, a right maintained by Article 80 para 1 of the United Nations Charter which safeguards the Human Right not only of the States but also of the peoples of mandated territories. By this opinion the ICJ invested individuals with an international right.

The advisory opinion on ***Reparation for Injuries suffered in the Service of the United Nations (1950)*** gave the United Nations the Status of a large international personality having the right to bring an international claim. This reinforced the principle that international rights do not belongs to States alone.

In the ***Corfu Channel Case (1949)*** the Court referred to the obligation of a coastal State towards certain general and well recognized principles namely elementary considerations of humanity, even more exacting in peace than in war, the principle of the freedom of maritime communications and obligations of State not to allow knowingly its territory to be used for acts contrary to the rights of other States.

In the ***Asylum Case, (1949*** the Court observed, "Asylum protects the political offender against any measures of a manifestly extra-legal character which a Government might take against its political opponents." The basic consideration of the Court's opinion is the protection of the individual against the violation of his rights as human beings.

The Court, in its advisory opinion on the ***Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (1950)*** answered the questions put by General Assembly concerning the obligations of those States to implement dispute settlement procedure of the Peace Treaties. It was alleged that in dealing with the question of the observance of human rights and fundamental freedom in these three States the Assembly was interfering or intervening in matters essentially within the domestic jurisdiction of the States. The basis for the allegation was derived from Article 2, para 7 of the United Nations Charter. The Court held after taking Article 1, para 3, Article 55 and Article 56 of the United Nations Charter into consideration, that any question of breach of these treaty obligations-if they be obligation-equally would not be matters essentially within the domestic jurisdiction of a State. The conclusion has been important to the contemporary international law of human rights in view of the fact that later the Court held that these Charter provisions do give rise to international obligations.

In ***South West Africa Cases, (1950)*** brought by Ethiopia and Liberia against South Africa, it was alleged that the practice of apartheid in South West Africa constituted a violation of South Africa's mandatory obligation to promote to the utmost, the well being of the inhabitants of the territory. Rejecting South Africa's preliminary objections as to the jurisdiction of the Court in 1962 the Court in its final judgment in 1966 held that applicants had not established any legal right or interest appertaining to them in the subject matter of the dispute. It also held that the arguments of Ethiopia and Liberia amounted to a plea that the Court should allow the equivalent of an ***'actio popularis'*** or right resident in any member of a community to take legal action in vindication of a public interest. The Court held that such a right did not find place in international law though it may be known to exist in certain municipal systems of law.

As such the stage of merits, which had generated exceptionally extended and detailed arguments over human rights issues could never be reached. Schwelb's comment upon the holding of the Court is that what is a flagrant violation of the purpose and principles of the charter when committed in Namibia is also such a violation when committed in South Africa proper or, for that matter, in any Sovereign Member State. (Ethiopia v. South Africa, and Liberia v. South Africa, 1962).

In ***Barcelona Traction, Light and Power Company Limited, (1972)*** case when holding the applicants claim inadmissible the Court distinguished between the

obligation of a State towards the international community as a whole and those arising vis-à-vis another State in the field of diplomatic protection.

By it the Court has found that the rules concerning basic rights of the human person are the concern of all states that obligations flowing from these rights run ***erga omnes that*** is towards all States. Thus, it follows that, when one State protests that another is violating the basic human rights of the its own citizens, the former State is not intervening in the latter's internal affairs, it rather is seeking to vindicate international obligations, which run towards it as well as all other States.

In the ***Nottebohm Case, (1955)*** the issue was whether Liechtenstein could exercise diplomatic protection vis-à-vis Guatemala on behalf of Nottebohm. The Court held that in view of the absence of any bond of attachment between Nottebohm and Liechtenstein, the latter was not entitled to extend its protection to Nottebohm vis-à-vis Guatemala and that, accordingly, its claim was inadmissible.

Still the law of international claims has been replete with limitations on the exercise of diplomatic protection which may have precisely such a result but the question still remains if the fundamental human rights indeed are of fundamental importance, should their pursuance on the international plane be so limited by traditional rules of diplomatic protection.

In its advisory opinion in the ***Western Sahara Case, (1955)*** the Court expressed its support to the applications of the principle of self-determination through the free and genuine expression of the will of the people of the territory.

In the case concerning ***United States Diplomatic and Consular Staff in Tehran. (1975)*** the Court held unlawful the detention of the hostages, occupation of the embassy of the United States and rifling of the embassy archives. It also held that:

"Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations as well as with the fundamental principles enunciated in the Universal Declaration of Human rights."

In 1970, the Security Council requested an advisory opinion of the Court on the ***Legal consequences for States of the continued presence of South Africa in Namibia despite a Security Council Resolution holding, as a consequence of General Assembly Resolution 2145 (XXI) that presence to be illegal,*** the Court found that the continued presence of South Africa being illegal. South Africa is

under obligations to withdraw its administration from Namibia immediately and thus to put an end to the occupation of the territory.

According to the Court, under the Charter of the United Nations, the former mandatory had pledged itself to observe and respect in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish and to enforce distinction, exclusion, restriction and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights, is a flagrant violation of the purposes and principles of the Charter.

These holdings are of fundamental importance to the contemporary charter of international law governing human rights.

Egon Schwelb says that "the Court leaves no doubt that in its view the Charter does impose on the members of the United Nations, legal obligations in the human rights field.

In ***Military and Paramilitary Activities in and Against Nicaragua, (1972)*** the Court held that:

"While the United States might form appraisal of the situation as to respect for human rights in Nicaragua, the use of force could not be appropriate method to monitor or ensure such respect."

The Court concluded that the protection of human rights cannot be compatible with the mining of ports, the destruction of oil installations and support for the Contras and held that any argument derived from the protection of human rights in Nicaragua could not afford a legal justification for the conduct of the United States.

The ***Electronica Sicul S.P.A. (ELSI), (1986)*** *is* an illustration of a State taking up the claim of its nationals in the Court and espousing it in an area of human rights i.e., property rights. The Court found no violation of such rights as established by treaty and it also found a claimed arbitrary act to be absent, which it defined as an act contrary not to "a rule of law" but "to the rule of law."

In its advisory opinion in ***Mazilu Case (Application of Article VI, Section 22 of the Convention of the Privileges and Immunities of the United Nations, (1989)*** the Court held that a special rapporteur of a Sub-Commission of the United Nations Human Rights Commission was entitled to privileges and immunities of a United Nations expert on mission-even in circumstances in which he had not been permitted to leave Romania to perform its function.

In a case concerning the ***Application of the Convention on the Prevention and Punishment of the Crime of Genocide,(1989)*** having regard to the application filed by the Republic of Bosnia and Herzegovina, instituting proceedings against the Federal Republic of Yugoslavia in respect of a dispute concerning alleged violation by Yugoslavia of the Convention on the Prevention and punishment of the Crime of Genocide the Court made an order unanimously providing that the Government of the Federal Republic of Yugoslavia should immediately, in pursuance of its undertaking in the convention on the prevention and punishment of the crime of Genocide, take all measures within its power to prevent commission of the crime of Genocide.

By 13 votes to 1 it further provided that the Government of Federal Republic of Yugoslavia should, in particular, ensure that any military, paramilitary or irregular armed Units which may be directed or supported by it as well as any organization and persons which may be subject to its control, direction or influence do not commit any acts of Genocide, of conspiracy to commit Genocide, of direct and public incitement to commit Genocide, or of complicity in Genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethical, racial or religious group.

The Court also directed that the Government of Federal Republic of Yugoslavia and that of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute or render it more difficult of solution.

That the influence of the Court on the evolution of international law of human rights has been considerably and predominantly constructive is apparent from the Survey of the cases that the ICJ has treated-the question of human rights and allied matters. Although there appears no prospect that the Court will become in the near future a Court of Human Rights, it can still be expected that the Court's contribution to the progressive development of the international law of Human Rights will continue unchecked.

6.4. International Criminal Court (ICC):

The International Criminal Court is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression etc. The ICC was created by the Rome Statute which came into force on 1 July 2002. The Court has established itself in The Hague, Netherlands, but its proceedings

may take place anywhere. It is intended to complement existing national judicial systems, and may only exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes.

The ICC has been accused by many, including the African Union, for primarily targeting people from Africa; to date, most of the ICC's cases are from African countries. Four out of eight current investigations originate, however, from the referrals of the situations to the Court by the concerned states parties themselves.

6.5. Trails in the ICC:

The Prosecutor has opened investigations into eight situations in Africa: the Democratic Republic of the Congo; Uganda; the Central African Republic; Darfur, Sudan; the Republic of Kenya; the Libyan Arab Jamahiriya; the Republic of Côte d'Ivoire and Mali. Of these eight, four were referred to the Court by the concerned states parties themselves (Uganda, Democratic Republic of the Congo, Central African Republic and Mali), two were referred by the United Nations Security Council (Darfur and Libya) and two were begun *proprio motu* by the Prosecutor (Kenya and Côte d'Ivoire). Additionally, by Power of Attorney from the Union of the Comoros, a law firm referred the situation on the Comorian-flagged *MV Mavi Marmara* vessel to the Court, prompting the Prosecutor to initiate a preliminary examination.

As of June 2013, the Court's first trial, the *Lubanga* trial in the situation of the DR Congo, is in the appeals phase after the accused was found guilty and sentenced to 14 years in prison and a reparations regime was established. The *Katanga-Chui* trial regarding the DR Congo was concluded in May 2012; Mr Ngudjolo Chui was acquitted and released. The Prosecutor has appealed the acquittal. The decision regarding Mr Katanga is pending. The *Bemba* trial regarding the Central African Republic is ongoing with the defense presenting its evidence. A fourth trial chamber, for the *Banda-Jerbo* trial in the situation of Darfur, Sudan, has been established with the trial scheduled to begin in May 2014. There are a fifth and a sixth trial scheduled to begin in July 2013 and in September 2013 respectively in the Kenya situation, namely the *Kenyatta* and the *Ruto-Sang* trials. The decision on the confirmation of charges in the *Laurent Gbagbo* case in the Côte d'Ivoire situation is pending after hearings took place in February 2013 and after the

decision was adjourned to give the Prosecutor more time to present compelling evidence. The confirmation of charges hearing in the *Ntaganda* case in the DR Congo situation is scheduled to begin in September 2013.

6.6. Crimes within the jurisdiction of the Court:

Part 2, Article 5 of the Rome Statute grants the Court jurisdiction over four groups of crimes, which it refers to as the "most serious crimes of concern to the international community as a whole": the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The Statute defines each of these crimes except for aggression. The crime of genocide is unique because the crime must be committed with 'intent to destroy'. Crimes against humanity are specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population. The Statute provides that the Court will not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted.

In June 2010, the ICC's first review conference in Kampala, Uganda adopted amendments defining "crimes of aggression" and expanding the ICC's jurisdiction over them. The ICC will not be allowed to prosecute for this crime until at least 2017. Furthermore, it expanded the term of war crimes for the use of certain weapons in an armed conflict not of an international character.

Many states wanted to add terrorism and drug trafficking to the list of crimes covered by the Rome Statute; however, the states were unable to agree on a definition for terrorism and it was decided not to include drug trafficking as this might overwhelm the Court's limited resources. India lobbied to have the use of nuclear weapons and other weapons of mass destruction included as war crimes but this move was also defeated. India has expressed concern that "the Statute of the ICC lays down, by clear implication, that the use of weapons of mass destruction is not a war crime. This is an extraordinary message to send to the international community."

6.7. Protection of Human Rights under ICC:

6.7.1. Rights of the accused:

The Rome Statute provides that all persons are presumed innocent until proven guilty beyond reasonable doubt, and establishes certain rights of the accused and persons during investigations. These include the right to be fully informed of the

charges against him or her; the right to have a lawyer appointed, free of charge; the right to a speedy trial; and the right to examine the witnesses against him or her.

To ensure "equality of arms" between defence and prosecution teams, the ICC has established an independent Office of Public Counsel for the Defence (OPCD) to provide logistical support, advice and information to defendants and their counsel. The OPCD also helps to safeguard the rights of the accused during the initial stages of an investigation. However, Thomas Lubanga's defence team say they were given a smaller budget than the Prosecutor and that evidence and witness statements were slow to arrive.

The trial court procedures are similar to the US Guantanamo military commissions.

6.7.2. Victim participation and reparations:

One of the great innovations of the Statute of the International Criminal Court and its Rules of Procedure and Evidence is the series of rights granted to victims. For the first time in the history of international criminal justice, victims have the possibility under the Statute to present their views and observations before the Court.

Participation before the Court may occur at various stages of proceedings and may take different forms, although it will be up to the judges to give directions as to the timing and manner of participation.

Participation in the Court's proceedings will in most cases take place through a legal representative and will be conducted "in a manner which is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial".

The victim-based provisions within the Rome Statute provide victims with the opportunity to have their voices heard and to obtain, where appropriate, some form of reparation for their suffering. It is this balance between retributive and restorative justice that will enable the ICC, not only to bring criminals to justice but also to help the victims themselves obtain justice.

Article 43(6) of home statute establishes a Victims and Witnesses Unit to provide "protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses." Article 68 sets out procedures for the "Protection of the victims and witnesses and their participation in the proceedings." The Court has also established an Office of Public Counsel for Victims, to provide support and assistance to victims and their legal

representatives. Article 79 of the Rome Statute establishes a Trust Fund to make financial reparations to victims and their families.

6.7.2.1. Participation of victims in proceedings:

The Rome Statute contains provisions which enable victims to participate in all stages of the proceedings before the Court. Hence victims may file submissions before the Pre-Trial Chamber when the Prosecutor requests its authorization to investigate. They may also file submissions on all matters relating to the competence of the Court or the admissibility of cases.

More generally, victims are entitled to file submissions before the Court chambers at the pre-trial stage, during the proceedings or at the appeal stage.

The rules of procedure and evidence stipulate the time for victim participation in proceedings before the Court. They must send a written application to the Court Registrar and more precisely to the Victims' Participation and Reparation Section, which must submit the application to the competent Chamber which decides on the arrangements for the victims' participation in the proceedings. The Chamber may reject the application if it considers that the person is not a victim. Individuals who wish to make applications to participate in proceedings before the Court must therefore provide evidence proving they are victims of crimes which come under the competence of the Court in the proceedings commenced before it. The Section prepared standard forms and a booklet to make it easier for victims to file their petition to participate in the proceedings.

It should be stipulated that a petition may be made by a person acting with the consent of the victim, or in their name when the victim is a child or if any disability makes this necessary.

Victims are free to choose their legal representative who must be equally as qualified as the counsel for the defense (this may be a lawyer or person with experience as a judge or prosecutor) and be fluent in one of the Court's two working languages (English or French).

To ensure efficient proceedings, particularly in cases with many victims, the competent Chamber may ask victims to choose a shared legal representative. If the victims are unable to appoint one, the Chamber may ask the Registrar to appoint one or more shared legal representatives. The Victims' Participation and Reparation Section is responsible for assisting victims with the organization of their legal representation before the Court. When a victim or a group of victims

does not have the means to pay for a shared legal representative appointed by the Court, they may request financial aid from the Court to pay counsel. Counsel may participate in the proceedings before the Court by filing submissions and attending the hearings.

The Registry, and within it the Victims' Participation and Reparation Section, has many obligations with regard to notification of the proceedings to the victims to keep them fully informed of progress. Thus, it is stipulated that the Section must notify victims, who have communicated with the Court in a given case or situation, of any decisions by the Prosecutor not to open an investigation or not to commence a prosecution, so that these victims can file submissions before the Pre-Trial Chamber responsible for checking the decisions taken by the Prosecutor under the conditions laid down in the Statute. The same notification is required before the confirmation hearing in the Pre-Trial Chamber to allow the victims to file all the submissions they require. All decisions taken by the Court are then notified to the victims who participated in the proceedings or to their counsel. The Victims' Participation and Reparation Section has wide discretion to use all possible means to give adequate publicity to the proceedings before the Court (local media, requests for co-operation sent to Governments, aid requested from NGOs or other means).

6.7.2.2. Reparation for victims:

For the first time in the history of humanity, an international court has the power to order an individual to pay reparation to another individual; it is also the first time that an international criminal court has had such power.

Pursuant to article 75 of the home statute the Court may lay down the principles for reparation for victims, which may include restitution, indemnification and rehabilitation. On this point, the Rome Statute of the International Criminal Court has benefited from all the work carried out with regard to victims, in particular within the United Nations.

The Court must also enter an order against a convicted person stating the appropriate reparation for the victims or their beneficiaries. This reparation may also take the form of restitution, indemnification or rehabilitation. The Court may order this reparation to be paid through the Trust Fund for Victims, which was set up by the Assembly of States Parties.

To be able to apply for reparation, victims have to file a written application with the Registry, which must contain the evidence laid down in Rule 94 of the Rules of Procedure and Evidence. The Victims' Participation and Reparation Section prepared standard forms to make this easier for victims. They may also apply for protective measures for the purposes of confiscating property from the persons prosecuted.

The Victims' Participation and Reparation Section is responsible for giving all appropriate publicity to these reparation proceedings to enable victims to make their applications. These proceedings take place after the person prosecuted has been declared guilty of the alleged facts.

The Court has the option of granting individual or collective reparation, concerning a whole group of victims or a community, or both. If the Court decides to order collective reparation, it may order that reparation to be made through the Victims' Fund and the reparation may then also be paid to an inter-governmental, international or national organization.

6.7.3. Rights of the accused:

Some argue that the protections offered by the ICC are insufficient. According to the Heritage Foundation "Americans who appear before the court would be denied such basic U.S. constitutional rights as trial by a jury of one's peers, protection from double jeopardy, and the right to confront one's accusers."

Others argue that the ICC standards are sufficient. According to the Human Rights Watch "the ICC has one of the most extensive lists of due process guarantees ever written", including "presumption of innocence; right to counsel; right to present evidence and to confront witnesses; right to remain silent; right to be present at trial; right to have charges proved beyond a reasonable doubt; and protection against double jeopardy". According to David Scheffer, who led the US delegation to the Rome Conference and who voted against adoption of the treaty, "when we were negotiating the Rome treaty, we always kept very close tabs on, 'Does this meet U.S. constitutional tests, the formation of this court and the due process rights that are accorded defendants?' And we were very confident at the end of Rome that those due process rights, in fact, are protected, and that this treaty does meet a constitutional test."

In some common law systems, such as the United States, the right to confront one's accusers is traditionally seen as negatively affected by the lack of an ability to

compel witnesses and the admission of hearsay evidence, which along with other indirect evidence is not generally prohibited.

6.7.4. Problem of International Criminal Proceedings:

The crucial problem international criminal courts face is the "lack of enforcement agencies" directly available to these courts, for purpose of collecting evidence, searching premises, seizing documents or executing arrest warrants and other judicial orders. Another serious problem is the length of international criminal proceedings. It results primarily from the adoption of the adversarial system, which requires that all the evidence be scrutinized orally through examination and cross examination (where as in the inquisitorarial system the evidence is selected beforehand by the investigating judge). In international criminal proceedings defendants not to plead guilty because of, among other things, the serious stigma attached to international crime. They prefer to stand trial in spite of the time involved in examination and cross examination of witnesses.

6.8. Sum Up:

Principal global judicial bodies are the ICJ and ICC, Neither of these courts allow individuals to bring complaints of human right violations. The ICJ is limited in jurisdiction to addressing complaints from one state to another. The ICC is responsible for trying individuals in criminal cases for specific offences, not for the adjudication of individual petitions for redress of human rights violations. The only judicial fora in which citizens can bring claims against their state for human rights violations are national legal systems and for certain states, a regional human rights courts. So there is an urgent need to establish an international human rights court to meet the challenges of human rights violations of mass as well as individual victims. No doubt, the difficulties in setting up an in international human rights court are considerable. Such a court will have to be anchored in the existing human rights framework in a way i.e. intellectually and practically attractive to interested states and the human rights movement alike.

"Judicial Romanticism," which over estimates the role of courts in the protection of human rights, is certainly inappropriate. Courts have defects of their own. Human rights remain an essential political issue, and the kind of Justice a court offer may not always respond to the need of victims and societies affected by human rights violation.

Yet, the way in which the development of international human rights law benefits from the cases and precedents of courts, both international and domestic, makes them an indispensable tool in the array of human rights institutions.

6.9. References:

- International criminal law, Antonio cassere, OUP. Towards an International criminal procedure, C.J.M. Safferling, OUP.

6.10. Check your progress:

A. Which of the following statements are true?

1. ICJ is not a court of human rights.
2. Advisory opinion of ICJ regarding human rights issues have not influence international law bearing on human rights.
3. The International criminal court, is a permanent tribunal to prosecute individual for genocide, was crime, crime against humanity etc. and it is intended to complement existing national judicial system.
4. The power to order to pay reparation to victim is taken by Geneva Convention.
5. In International court of justice individual as well as state can appear before the court.

B. Fill in the blanks

1. ………………….says that "the court leaves no doubt that in its view the charter does impose on the members of united nations, legal obligations in the human rights field.
2. The International criminal court was created by……………..which came into force on………………..
3. …………………of the Rome statute grants the ICC jurisdiction over……………groups of crime.
4. The ICC's first review conference in Kampola, adopted amendment defining…………………..and expanding the ICC's jurisdiction over them.
5. …………………of the Rome statute establishes a trust fund to make……………..to………………..and their families.

6.11. Answers to check your progress:

A. 1. True

2. False
3. True
4. False
5. False

B. 1. Egon Schwelb
2. Rome Statute, 1 July, 2002
3. Part 2, Article 5, Four
4. Crimes of aggression
5. Article 79, financial reparation, victims

6.12. Terminal Questions:

1. Describe the role of ICJ and ICC in the protection of Human rights with the help of case laws.
2. Elaborate various provisions related to rights of the victims and the accused in the statute of ICC?
3. What are the challenges before the ICC and IC in the protection of human rights?

UNIT-7

Humanitarian Law -I

Structure:

7.1. Introduction
7.2. Reasons for War
7.3. Settlement of Disputes
7.3.1. Charter of UN
7.3.2. International Humanitarian Law
7.4. Role of International Humanitarian Law
7.5. A glance at the History of Humanitarian Law
7.6. Protection of War victims and Prevention of War through Laws
7.6.1. Protection of War victims through Laws
7.6.2. Prevention of War through Laws
7.7. Sources of Modern Humanitarian Law
7.8. Fundamental Rules of Humanitarian Law applicable in Armed conflicts
7.9. Sum up
7.10. References
7.11. Check your progress
7.12. Answers to check your progress
7.13. Terminal questions

Objectives:

After going through the unit you will be able to :

- Know the meaning of Humanitarian Law and its position in International Law.
- Understand the role of international humanitarian law in prevention of war and in protection of war victims.
- Comprehend the development of humanitarian law through various conventions and its present position.

7.1. Introduction:

International humanitarian law is a branch of the law of nation, or international law. The term 'International Humanitarian law' was used in 22nd Red Cross Conference in 1965. International Humanitarian Law – also called the law of armed conflict and is a special branch of law governing situations of armed conflict- in a war. International humanitarian law seeks to mitigate the effects of war, first in that it limits the choice of means and methods of conducting military operations, and secondly in that it obliges the belligerents to spare persons who do not or no longer participate in hostile actions.

International humanitarian law is different from law of war because traditionally the matter related to law of war was not covered by international humanitarian law. International humanitarian law does not deal with the effect of war on diplomatic and treaty relations of the parties of conflicts, rules relating to economic wars and rules relating to neutral states. It only deals with rules relating to protection of victims times of war. In this sense international humanitarian law is a branch of law of war.

7.2. Reasons for War:

War is characterized by outbursts of primitive, raw violence. When State cannot or will not settle their disagreements or differences by means of peaceful discussion, weapons are suddenly made to speak. War inevitably results in immeasurable suffering among people and in severe damage to objects. War is by definition evil, as the Nuremberg Tribunal set forth in its judgment of the major war criminals of the Second World War. No one could presently wish to justify war for its own sake.

Yet, States continue to wage wars, and groups still take up weapons when they have lost hope of just treatment at the hands of the government. And no one would condemn a war waged, for example, by a small State protecting itself against an attack on its independence ("war of aggression") or by a people rebelling against a tyrannical regime.

7.3. Settlement of Disputes:

A war arises due to disputes between states or between states and its subjects. If these disputes could be resolved through peaceful medium the war can be avoided i.e. the means offered to State under contemporary international law for the peaceful settlement of conflicts without recourse to the use of force.

7.3.1. Charter of UN:

The Charter of the United Nations prohibits war; it even prohibits the threat to use force against the territorial integrity or political independence of any State. They are to settle their differences in all circumstances by peaceful means. A state which attempts to use force against another State to achieve its ends contravenes international law and commits an aggressive act, even when it is apparently in the right.

The UN Charter does not, however, impair the right of a State to resort to force in the exercise of its right to self-defence. The same hold true for third-party States who come to the aid of the State being attacked (right of collective self-defence). Finally, the United Nations may order military or non-military actions to restore peace.

Thus, war is prohibited under existing international law, with the exception of the right of every State to defend itself against attack.

7.3.2. International Humanitarian Law:

The fact that international humanitarian law deals with war does not mean that it lays open to doubt the general prohibition of war. The Preamble to Additional Protocol I to the Geneva Conventions puts the relationship between the prohibition of war and international humanitarian law as follows:

"Proclaiming their earnest wish to see peace prevail among peoples, Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force…………

Believing it necessary nevertheless to reaffirm and develop the provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August, 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations …….."

International humanitarian law quite simply stands mute on whether a State may or may not have recourse to the use of force. It does not itself prohibit war, rather it refers the question of the right to resort to force to the constitution of the international community of States as contained in the United Nations Charter. International humanitarian law acts on another plane : it is applicable whenever an armed conflict actually breaks out, no matter for what reason. Only facts matter;

the reasons for the fighting are of no interest. In other words, international humanitarian law is ready to step in, the prohibition of the use of force notwithstanding, whenever war breaks out, whether or not there is any justification for that war.

Clearly, therefore international humanitarian law is also an essential part of the order of peace as set forth in the Charter of the United Nations. The international community cannot, therefore, allow itself to neglect international humanitarian law.

7.4. Role of International Humanitarian Law:

International humanitarian law is part of universal international law whose purpose it is to forge and ensure peaceful relations between peoples. It makes a substantial contribution to the maintenance of peace in that it promotes humanity in time of war. It aims to prevent – or at least to hinder – mankind's decline to a state of complete barbarity. From this point of view, respect for international humanitarian law helps lay the foundations on which a peaceful settlement can be built once the conflict is over. The chances for a lasting peace are much better if a feeling of mutual trust can be maintained between the belligerents during the war. By respecting the basic rights and dignity of man, the belligerents help maintain that trust. Hence international humanitarian law helps pave the road to peace.

7.5. A glance at the history of humanitarian law:

It is hardly possible to find documentary evidence of when and where the first legal rules of a humanitarian nature emerged, and it would be even more difficult to name the "creator" of international humanitarian law. For everywhere that confrontation between tribes, clans, the followers of a leader or other forerunners of the State did not result in a fight to the finish, rules arose (often quite unawares) for the purpose of limiting the effects of the violence. Such rules, the precursors of present-day international humanitarian law, are to be found in all cultures. More often than not they are embodied in the major literary works of the culture (from example, the Indian epic Mahabharata), in religious books (such as the Bible or the Koran) or in rules on the art of war (the rules of Manu or the Japanese code of behavior, the bushido). In the European Middle Ages, the knights of chivalry adopted strict rules on fighting, not least for their own protection. The notion of chivalry has survived to this day. It was not uncommon for the parties to conflicts to reach agreements on the fate of prisoners: these were the predecessors of our

modern multilateral agreements. Such rules also existed and still exist in cultures with no written heritage.

In short, powerful lords and religious figures, wise men and warlords from all continents have since time immemorial attempted to limit the consequences of war by means of generally binding rules.

The achievements of 19th century Europe must be viewed against this rich historical background. Today's universal and for the most part written international humanitarian law can be traced directly back to two persons, both of whom were marked by a traumatic experience of war: Henry Dunant and Francis Lieber. At almost the same time, but apparently without knowing of each other's existence, Dunant and Lieber made essential contributions to the concept and contents of contemporary international humanitarian law.

Dunant and Lieber both built on an idea put forward by Jean-Jacques Rousseau in The Social Contract, which appeared in 1762: "War is in no way a relationship of man with man but a relationship between States, in which individuals are only enemies by accident, not as men, but as soldiers …" Rousseau continued, logically, that soldiers may only be fought as long as they themselves are fighting. Once they lay down their weapons "they again become mere men". Their lives must be spared.

Rousseau thus summed up the basic principle underlying international humanitarian law, i.e. that the purpose of a bellicose attack may never be to destroy the enemy physically. In so doing he lays the foundation for the distinction to be made between members of a fighting force, the combatants, on the one hand, and the remaining citizens of an enemy States, the civilians not participating in the conflict, on the other. The use of force is permitted only against the former, since the purpose of war is to overcome enemy armed forces, not to destroy an enemy nation. But force may be used against individual soldiers only so long as they put up resistance. Any soldier laying down his arms, or obliged to do so because of injury, is no longer an enemy and may therefore, to use the term s of the contemporary law of armed conflict, no longer be the target of a military operation. It is in any case pointless to take revenge on a simple soldier, as he cannot be held personally responsible for the conflict.

7.6. Protection of war victims and prevention of war through laws:

Law is a set of rules to control the conduct of human being and it also minimizes the conflicts among them. Thus, results in settling disputes. This feature of the Law can prevent war. And if war becomes inevitable then it can minimize its ill effect.

7.6.1. Protection of war victims through law:

The Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (of 22 August 1864) lays the legal groundwork for the activities of army medical units on the battlefield. Because they were neutralized, their immunity from attack could be upheld : medical units and personnel may be neither attacked nor hindered in the discharge of their duties. Equally, the local inhabitants may not be punished for assisting the wounded. The 1864 Convention made it clear that humanitarian work for the wounded and the dead, whether friend or foe, was consistent with the law of war. It also introduced the sign of the red cross on a white ground for the identification of medical establishments and personnel.

The First World War was a serious test for the law of Geneva, and resulted in a further revision in 1929. Four years after the end of the Second World War the (First) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (of 12 August 1949) was adopted. It is still in force.

A Convention adopted at the 1899 Hague Peace Conference placed the victims of war at sea under the protection of the law of Geneva. A revised version of the Convention was adopted at the 1907 Hague Peace Conference, and later became the present (Second) Geneva Convention for the Amelioration of the Condition of wounded, Sick and Shipwrecked Members of Armed Forces at Sea (of 12 August, 1949).

The above-mentioned Hague Peace Conferences examined another topic with a rich background in customary law : the treatment of prisoners of war. The 1899 and 1907 Conventions on the Laws and Customs of War on Land contained some provisions on the treatment of prisoners. On the basis of the experience of the First World War, one of the two 1929 Geneva Conventions consisted in fact in a Prisoner-of-War Code, which in turn was also developed after the Second World War. The (Third) Geneva Convention relative to the Treatment of Prisoners of War (of 12 August 1949) remains in force to this day.

In addition to the process set in motion by Henry Dunant and the ICRC to codify the rules for the protection of the wounded, the sick and soldiers who had fallen into enemy hands, there were developments on a second front. Those developments are linked to the name of the German immigrant to America, Francis Lieber, and indirectly to that of the great Abraham Lincoln. Who asked Lieber to put together a few rules on the conduct of war for the use of troops in the American Civil War. The resulting "Instructions for the Government of Armies of the United States in the Field" (General Orders No. 100), referred to as the "Lieber Code", were published in 1863. The manual contained rules covering all aspects of the conduct of war. The provisions of the Lieber Code were intended to influence the conduct of war with a view to preventing unnecessary suffering and to limiting the number of victims.

7.6.2. Prevention of war through Laws

Lieber's work heralded two momentous developments. First, it set a precedent for subsequent military handbooks and instructions on the law of war. Secondly, it marked the starting point for the second series of developments in modern international humanitarian law, which saw the emergence of rules on the conduct of war itself. The first evidence of this was a short agreement, the 1868 Declaration of St. Petersburg, which prohibited the use of projectiles weighing less than 400 grammes. The Conference convened by the Russian Tsar in St. Petersburg was able, without fuss, to prohibit the use of a certain type of ammunition in view of the fact that such projectiles uselessly aggravated the suffering of disabled men or rendered their death inevitable. Since the purpose of military operations, i.e. to disable the greatest number of enemy soldiers, does not require the infliction of such horrendous wounds, the diplomatic representatives were able to agree on the prohibition of the use of this type of projectile.

Both Hague Peace Conference which took place at the turn of the century attempted to set broader international legal limits to means and methods of warfare. The most important result was the Hague Convention No. IV of 18 October 1907 respecting the Laws and Customs of War on Land and annexed Regulations. This Convention has a long history, shared by the Lieber Code, the St. Petersburg Declaration, the 1874 Brussels Declaration, the Oxford Manual drafted in part by Gustave Moynier and published in 1880, and the Convention worked out by the first Hague Peace Conference in 1899. The Hague Regulations respecting the Laws and Customs of War on Land codified the law of war and contains in

particular rules on the treatment of prisoners of war, on the conduct of military operations – with an especially important chapter on the "Means of Injuring the Enemy, Sieges and Bombardments" – and on occupied territory.

The preamble paragraphs to Hague Convention No. IV contains one sentence which alone makes that treaty one of signal importance. The Martens Clause, so called after the Russian representative, stipulates that in cases not covered by the rules of law, "the inhabitants and belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established by civilized peoples, from the laws of humanity, and the dictates of public conscience". The Martens Clause constitutes a "legal safety-net". Where there are loopholes in the rules of positive law, says the Martens Clause, then a solution based on basic humanitarian principles must be found.

The Second Hague Peace Conference also examined war at sea and adopted several convections on different aspects of the law of war at sea. They were and in some cases still are the sources of the law applicable to the conduct of war at sea, the customary rules of which continue to evolve. The Conference also went a step further than the St. Petersburg Declaration and prohibited certain types of weapons and ammunitions. Most importantly, however, a conference convened by the League of Nations in 1925 adopted the Protocol prohibiting the use of poisonous gages and bacteriological methods of warfare. The prohibition of the use of poisonous gases in particular, which has become a rule of customary international law and is therefore binding on all States, has been an important factor in the struggle to ban inhumane weapons. At present, a comprehensive treaty on chemical weapons prohibits not only their use but also their development, production and stockpiling.

7.7. Sources of modern humanitarian law:

On 12 August, 1949, the representatives of the 48 States invited to Geneva by the Swiss Confederation (as the depositary of the Geneva Conventions) unanimously adopted four new conventions for the protection of the victims of war. These conventions were the result of lengthy consultation which the ICRC had undertaken on the strength of its experiences during the Second World War. They were the work not only of legal experts and military advisers, but also of representatives of the Red Cross movement. The four Geneva Conventions of 12

August 1949 replaced the 1929 Conventions, and in part Hague Convention No. IV.

The first three Conventions cover well-known topics, namely protection of the wounded and sick, the shipwrecked and prisoners of war. The Fourth Geneva Convention, however, breaks new ground in that it protect civilian persons who have fallen into enemy hands from arbitrary treatment and violence. Its most important section is that on occupied territories. The Fourth Geneva Convention is evidence that the international community had learned from failure since it is common knowledge that the worst crimes during the Second World War were committed against civilian persons in occupied territory. The 1949 treaties also led to a further, extremely important development: the extension of the protection under humanitarian law to the victims of civil wars.

The years after 1949 have not brought peace. Rather, the entire period has been characterized by countless conflicts. The decolonization of Africa and Asia was often achieved through violent clashes. In the struggle between the (materially) weak and the (militarily) strong, refuge was taken in methods of fighting which were hardly compatible with the traditional manner of waging war (guerrilla warfare). At the same time, an unlimited arms race led to the development of arsenals with weapon systems based on the latest technology. The use of such weapons, above all nuclear weapons, would have inevitably pulled the rug out from under any principle of international humanitarian law.

But the second half of the 20th century has also been characterized by the triumph of human rights. The Universal Declaration of human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the Refugee Convention, the 1966 United Nations Human Rights Covenants, and regional human rights treaties, all have enhanced the protection by international law of individuals against abuse of power by governments and promoted individual well-being. International humanitarian law could not and did not wish to remain indifferent to those changes. When one finally remembers that 1949 Conventions almost completely pass over a very important point, namely the protection of the civilian population from the direct effects of hostilities, it is easy to understand why the ICRC, after much preparation, submitted two new draft treaties in the seventies to governments for discussion and adoption. The *Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts,* held in Geneva from 1974 to 1977, adopted the two Protocols additional to the

Geneva Conventions on 8 June 1977. Protocol I contains new rules on international armed conflicts, Protocol II develops the rules of international humanitarian law governing non-international armed conflicts. The four 1949 Geneva Conventions remained unchanged, but were considerably supplemented by the Additional Protocols.

The Diplomatic Conference was attended by the representatives of 102 States and several national liberation movements. Conflicting viewpoints and tension between the participants made the Conference an accurate reflection of an international community comprising all peoples. While it is a historical fact that international humanitarian law up to and including the 1949 Conventions was based on European schools of thought, that can no longer be said of the 1977 Additional Protocols. Extra-European attitudes, other concerns and new priorities also influenced the texts, which nevertheless remain true to a universally accepted humanitarian goal. With the Additional Protocols, international humanitarian law gained a foot hold in the Third World.

In addition to the two Additional Protocols, the years after 1949 saw further innovations in the protection under international law of persons and objects in time of war. There was the Convention of 14 May 1954 for the protection of cultural property in the event of armed conflict. Strongly influenced by the Geneva Conventions, the treaty created a sort of "Red Cross for cultural property" and charged UNESCO with its implementation.

The Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction has decisively strengthened one of the prohibitions set forth in the 1925 Geneva Protocol, namely the prohibition of bacteriological weapons. The Chemical Weapons Treaty of 1993 prohibits not only the use but also the production and possession of chemical weapons. The Conventions on the Prohibition of Military or any or any other Hostile Use of Environmental Modification Techniques (of 10 December 1976) was intended to nip in the bud the expansion of the conduct of hostilities in a new field, that of environmental modification techniques. These conventions were adopted in the framework of the United Nations.

Finally, the Convention of 10 October, 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. Its aim is to limit the use of certain

particularly grim weapons. The general prohibition of the law prohibition of the law of The Hague and of Article 35 of Additional Protocol I is thereby given concrete form and made into specific prohibitions that can be applied in practice. The three protocols deal with incendiary weapons, mines and non-detectable fragments. Further protocols can be drawn up at any time at the request of contracting parties.

The law for the protection of the victims of war is not limited to treaties, i.e. to written texts. The agreements between States are at present undoubtedly the most common source of international laws and obligations; they have not, however, replaced unwritten law, or customary law, which contains important principles and rules. Large sections of the 1949 Geneva Conventions can be traced back to customary law. Treaty law and customary law can therefore develop simultaneously along the same lines. Sometimes international customary law must step in, for example when States cannot reach agreement on a treaty rule.

The entire body of written and unwritten international humanitarian law is anchored in a few fundamental principles which form part of the foundation of international law. Those principles do not, however, take precedence over the law in force, nor do they replace it. Rather, they highlight guiding principles and thereby make the law easier to understand.

7.8. Fundamental rules of humanitarian law applicable in armed conflicts:

1. Persons hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.

2. It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.

3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports and materiel. The emblem of the Red Cross (Red Crescent, red lion and sun) is the sign of such protection and must be respected.

4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They

shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.

5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare of a nature to cause unnecessary losses or excessive suffering.

7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare the civilian population and property. Neither the civilian population nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

7.9. Sum Up:

International Humanitarian Law is the branch of law of war governing situations of armed conflict in a war. The aim of international humanitarian law is to protect the human beings and to safeguard the dignity of man in the extreme situation of war. The provisions of international humanitarian law have always been tailored to fit human requirements. They are bound to an ideal: the protection of man from the consequences of brute force.

The UN charter has prohibited the use of force against the territorial integrity or political independence of any state. The states have to settle their differences in all circumstances by peaceful means. But International humanitarian law is silent on issue of use of force. It is applicable whenever an armed conflict actually breaks out.

The humanitarian law has evolved through various international conventions like the convention for the Amelioration of the condition of the wounded in Armies in the field, 1864, conventions on Hague peace conferences etc. These conventions have modified the humanitarian law and have also enhanced it for dealing with the present and future problems.

The International Humanitarian Law does not and even cannot prohibit war because it is the result of a compromise, i.e. the weighing of conflicting interests. In this the law does not sanction the use of brute force; it reflects a desire to set

realistic limits to the use of force which can be successfully applied. It is not the purpose of international humanitarian law to prohibit war or to adopt rules rendering war impossible. The main aim is to minimize the effect of war and the suffering of the victims.

7.10. References:

- Preamble of U.N. Charter
- Convention relating to the status of refugees

7.11. Check your progress:

A. Fill in the blanks :

1. It is for bidden to kill or injure an enemy who surrenders or who is……………………..
2. The Charter of UN also prohibits the…………………against territorial integrity or political independence of any state.
3. The history of international humanitarian law can be traced through writings of two persons…………………and…………………..
4. On……………………., the representatives of the 48 states invited to Geneva by the Swiss confederation.
5. The Diplomatic conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was held in…………………………..

B. True or False :

1. The provisions relating to occupied territories is provided in third Geneva convention.
2. There is documentary evidence of emergence of the humanitarian law.
3. War is prohibited under international law, but with the exception of the right of every State to define itself.
4. The Instructions for the Government of Armies of the states in the Field (General Orders No. 100) is well as "Lieber Code".
5. The Convention of 10th April, 1972 has prohibited the use of bacteriological weapons.

7.12. Answer to check your progress:

A. Fill in the blanks :
1. Hors de combat
2. Threat to use force
3. Henry Dunant and Francis Lieber
4. 12th August, 1949
5. Geneva
B. True or False :
1. False
2. False
3. True
4. True
5. True

7.13. Terminal Questions :

Q1. What do you mean by International Humanitarian Law? Discuss the nature and extent of prohibition of use of force under UN charter and International Humanitarian Law?

Q2. Give a brief detail on history of humanitarian law and also discuss its role in maintaining peace?

Q3. Whether protection of war victims and prevention of war can be done through Laws? Discuss, also summarize the rules of humanitarian law applicable in armed conflicts.

UNIT-8

Humanitarian Law-II

Structure:

8.1. Introduction
8.2. Various NGOs
8.2.1. Amnesty International
8.2.2. Human Rights watch
8.2.2.1. Americas watch
8.2.2.2. The watch committees
8.2.3. International coalition against Enforced disappearances
8.2.4. The International Federation for Human Rights (FIDH)
8.2.4.1. Activities of FIDH
8.2.5. Trail (Track Impunity Always)
8.2.6. World Organization Against torture.
8.3. Private Advocacy for Human Rights
8.3.1. The process adopted by H.R. NGOs.
8.4. The impact factor of HR NGOs and advocacy groups
8.5. Private action for relief and development
8.5.1. Relief
8.5.2. Relief : Process
8.5.3. Relief : Influence
8.5.4. Development : Process
8.5.5. Development : Influence
8.6. Sum up
8.7. References
8.8. Check your progress
8.9. Answers to check your progress
8.10. Terminal questions

Objectives:

After going through the unit you should be able to:

- Know that there are various private bodies (NGOs) continuously making efforts in the protection of human rights.
- Understand that these bodies playing a major role in the implementation of human right protection strategies of various government organizations.
- About the major challenges before the NGOs protecting HRS.

8.1. Introduction:

It is commonly believed that all human beings have some basic rights. However there is no widely accepted definition of rights. Concern about human rights was first raised in the west, where related treaties and conventions were drafted as well. Before Second World War, human rights were viewed as an internal issue of modern nation state, of which the most salient characteristic is sovereignty. After the Second World War, protection of human rights has started to take place in the agenda of world politics. The first collaborative initiative to protect human rights in international basis is the UN charter. It contains numerous references to fundamental human rights however, does not define what they exactly are. Nongovernmental organizations are increasingly involved in the processes of global politics. In particular, the end of cold war created great opportunities for NGO activity on the global level. The increasing role of NGOs, thus, made it necessary to evaluate their nature, types and procedures in details.

8.2. Various NGO's:

8.2.1. Amnesty International:

Amnesty International (commonly known as Amnesty and AI) is a non-governmental organization focused on protection of human rights around the world. The objective of the organization is "to conduct research and generate action to prevent and end grave abuses of human rights, and to demand justice for those whose rights have been violated."

Amnesty International was founded in London in July 1961 by English labour lawyer Peter Benenson.

Amnesty International primarily targets governments, but also reports on non-governmental bodies and private individuals ("non-state actors").

There are six key areas which Amnesty deals with:

- Women's, children's, minorities' and indigenous rights
- Ending torture
- Abolition of the death penalty
- Rights of refugees
- Rights of prisoners of conscience
- Protection of human dignity.

Some specific aims are to: abolish the death penalty, end extra judicial executions and "disappearances," ensure prison conditions meet international human rights standards, ensure prompt and fair trial for all political prisoners, ensure free education to all children worldwide, decriminalize abortion, fight impunity from systems of justice, end the recruitment and use of child soldiers, free all prisoners of conscience, promote economic, social and cultural rights for marginalized communities, protect human rights defenders, promote religious tolerance, protect LGBT rights, stop torture and ill-treatment, stop unlawful killings in armed conflict, uphold the rights of refugees, migrants, and asylum seekers, and protect human dignity.

The role of Amnesty International has an immense impact on getting citizens onboard with focusing on human rights issues. These groups influence countries and governments to give their people justice with pressure and man power. An example of Amnesty International's work, which began in the 1960s, is writing letters to free imprisoned people that were put there for non-violent expressions. The group now has power, attends sessions, and became a source of information for the U.N. Felix Dodds states in a recent document that, "In 1972 there were 39 democratic countries in the world; by 2002, there were 139." This shows that non-governmental organizations make enormous leaps within a short period of time for human rights.

8.2.2. Human Rights Watch:

Human Rights Watch is an international non-governmental organization that conducts research and advocacy on human rights. Its headquarters are in New York City and it has offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Johannesburg, London, Los Angeles, Moscow, Paris, San Francisco, Tokyo, Toronto, and Washington.

Human Rights Watch was founded as a private American NGO in 1978, under the name Helsinki Watch, to monitor the former Soviet Union's compliance with the Helsinki Accords. Helsinki Watch adopted a methodology of publicly "naming and shaming" abusive governments through media coverage and through direct exchanges with policymakers. By shining the international spotlight on human rights violations in the Soviet Union and its European partners, Helsinki Watch contributed to the democratic transformations of the region in the late 1980s.

8.2.2.1. Americas Watch:

American Watch: It was founded in 1981 while bloody civil wars engulfed Central America. Relying on extensive on-the-ground fact-finding, Americas Watch not only addressed perceived abuses by government forces but also applied international humanitarian law to investigate and expose war crimes by rebel groups. In addition to raising its concerns in the affected countries, Americas Watch also examined the role played by foreign governments, particularly the United States government, in providing military and political support to abusive regimes.

8.2.2.2. The watch committees:

Asia Watch (1985), **Africa Watch** (1988), and **Middle East Watch** (1989) were added to what was then known as **"The Watch Committees."** In 1988, all of the committees were united under one umbrella to form Human Rights Watch.

8.2.3. International Coalition against Enforced Disappearances:

The International Coalition against Enforced Disappearances (ICAED) gathers organizations of families of disappeared and human rights NGOs working in a nonviolent manner against the practice of enforced disappearances at the local, national and international level.

The ICAED is promoting the early ratification and effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, which was adopted by the United Nations General Assembly on December 20, 2006.

The ICAED was founded officially in September 2007 during a side event to the Human Rights Council session in Geneva. The ICAED forms the next phase in the international cooperation of all those working towards better protection from enforced disappearances.

8.2.4. The International Federation for Human Rights (FIDH):

Is a non-governmental federation for human rights organizations? Founded in 1922, FIDH is the oldest international human rights organization worldwide and today brings together 164 member organizations in over 100 countries.

FIDH is nonpartisan, nonsectarian, and independent of any government. Its core mandate is to promote respect for all the rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

FIDH co-ordinates and supports the actions of its members and is their contact with intergovernmental organizations.

FIDH has a consultative status before the United Nations, UNESCO and the Council of Europe, and observer status before the African Commission on Human and Peoples' Rights, the organization international De la Francophonie and the International Labour Organization.

8.2.4.1. Activities of FIDH:

(a) Monitoring and promoting human rights, assisting victims: These activities, including fact-finding and trial observation missions, research, advocacy and litigation, are implemented by independent human rights experts from all regions.

(b) Mobilizing the international community: FIDH provides guidance and support to its member organizations and other local partners in their interactions with international and regional inter-governmental organizations (IGOs).

(c) Supporting national NGOs and increasing their capacity: FIDH, together with its members and partners, implements cooperation programs at the national level, aimed at strengthening the capacity of human rights organizations. FIDH provides training and assists in creating opportunities for dialogue with authorities.

(d) Raising awareness: informing, alerting, and bearing witness: FIDH draws public attention to the outcomes of its missions, its research findings and eyewitness accounts of human rights violations, by means of press releases, press conferences, open letters, mission reports, urgent appeals, petitions, and the FIDH website.

8.2.5. TRIAL (Track Impunity Always):

Trial (Track Impunity Always) is an NGO of Switzerland, founded in 2002 and based in Geneva. Its main objective is to fight against impunity for the most

serious crimes: genocide, crimes against humanity, war crimes, torture, enforced disappearances.

The association pursues its objective by acting especially in the following three directions:

- public awareness of the criminal justice system in relation to national and international crimes
- monitoring and enfoncement of législation and Swiss practices
- Support of Victimes

The fight against impunity for the most serious crimes has led Trial carry out activities such as filing civil and criminal complaints with the Swiss courts , the development of positions on bills and the arrest of national and international authorities on matters related to its mandate .

With regard to a wider audience, Trial organizes conferences, public events during the International Day of Justice , interventions in the press and the radio and television framework . The database *Trial Watch* , launched in 2004, is intended to identify all international and national procedures relating to genocide, crimes against humanity, war crimes, torture and enforced disappearances. It may interest a public historians, sociologists, journalists as well as lawyers.

The increasing activity of the International Criminal Court and the possibilities of non-judicial remedy to the Spécial Procédures of the Human Rights Trial to bring focus much to its projects to support and defend victims of crimes contained in the Articles of Association. In order to facilitate the exercise of jurisdiction by the International Criminal Court (ICC) Trial launched the Swiss NGO Coalition for the ICC and its secretariat.

8.2.6. World Organization Against Torture:

The **World Organization Against Torture** (Organization Mondiale Contre la Torture, OMCT) is the world's largest coalition of non-governmental organizations fighting against arbitrary detention, torture, summary and extrajudicial executions, forced disappearances and other forms of violence. The global network consists of almost 300 local, national and regional organizations, which share the goal of eradicating torture and fostering respect of human rights for all.

8.3. Private advocacy for human rights:

There are perhaps 250 private organizations consistently active across borders that take as their reason for being (raison d'etre) the advocacy of some part of the international law of human rights and/or humanitarian affairs on a global basis.

The oldest and best-funded human rights NGOs are based in the west and concern themselves primarily with civil and political rights in peace time and international humanitarian law in war or similar situation. Western societies have manifested the civil rights, private wealth, leisure time and value structures that allow for the successful operation of major human rights NGOs. To advocate human rights via a truly independent and dynamic NGO, there must be respect for civil rights and a civic society to start with. With the spread of liberal democracy and more open societies after the Cold War, the number of NGOs at least spasmodically active on some human rights issues has greatly increased. But the percentage of human rights groups, relative to the total number of NGOs active in international relations, has remained rather stable.

8.3.1. The Process:

If we focus on the advocacy of traditional human rights organizations, either as separate entities or part of a movement, it is reasonably clear what these groups do. First, the bedrock of all their activity is the collection of accurate information and its timely dissemination for a group to generate influence on governments and other public authorities like the UN Human Rights Commission; it must manifest a reputation for accurate reporting and dissemination of information. State does not exist primarily to report the truth. They exist primarily to exercise power on behalf of national interests as they see them relevant there is a the old maxim about the role of ambassadors: they are sent abroad to lie for their country. Private human rights groups, on the other hand, do not fare very well if they do not develop a reputation for accurate reporting of human rights information.

Amnesty International (AI has had a reputation since its founding in 1961 for accurate reporting primarily about prisoners of conscience those imprisoned for their political and social views expressed mostly non-violently and about torture and the death penalty, inter alia. It has a research staff in London of about 320 persons (plus about 100 volunteers) that is much larger than the staff of the UN Human Rights Centre in Geneva. The International Committee of the Red Cross (ICRC) has built up a reputation since 1863 for meticulously careful statements about prisoners of war and other victims of armed conflict and complex emergencies. Its staff of some 600 in Geneva, plus another 1,000 or so in the field

(including those seconded from National Societies but not counting those hired locally), is extremely hesitant to comment unless its delegates in the field can directly verify what has transpired.

Second, the human rights advocacy NGOs, on the basis of their analysis and dissemination of information, try to persuade public authorities to adopt new human rights standards or apply those already adopted. This activity can fairly be termed lobbying, but in order to preserve their non-political and tax-free status in most western societies, the groups tend to refer to this action as education.

The number of advocacy groups for various human rights causes grew dramatically in the last quarter of the twentieth century, even if the core group with a global focus and a link strictly to the international law of human rights and humanitarian affairs has remained relatively small. At the 1993 UN Conference on Human Rights at Vienna, the UN officially reported that 841 NGOs attended. Particularly remarkable has been the number of groups advocating greater attention to women's rights as human rights. Their presence was felt both at Vienna and at the 1991 UN Conference on Women at Beijing. These and other UN Conferences were sometimes criticized as nothing more than talking shops or debating societies. Hardly ever did states drastically change their policies after these meetings. But the conferences provided focal points for NGO organizing and networking. At least for a time they raised the world's consciousness about human rights in general or particular rights question. At the close of the twentieth century there were more private reports being issued on more human rights topics than ever before in world history. Women's rights, children's rights, prisoner's rights, etc. all drew extensive NGO attention. True, biases continued. Social and economic rights continued to be the step-children or illegitimate offspring of the human rights movement, especially on the part of NGOs based in the West. Nevertheless, an international civic society was emerging in which human rights advocacy groups and their allies were highly active.

8.4. The Impact factor of HR NGOs and advocacy groups:

The most important question was not so much what the human rights groups did, and how; that was reasonably clear to close observers. Rather, the challenging question was how to specify, then generalize about, their influence. It had long proved difficult to precisely analyze the influence of any interest group or coalition in any political system over time. Why was it that in the USA the "tobacco lobby"

seemed so powerful, only to suddenly be placed on the defensive in the 1990s and lose a series of votes in the US Congress that might produce tougher laws on tobacco advertising any use? Why was it that the "Israeli lobby", generally thought to be one of the more powerful in American politics, seemed to weaken in the 1990s and was certainly unable to block a whole series of arms sales to Arab states? Why was the "China lobby", presumably strong in Washington in the 1970s and 1980s, unable to block the relative reduction of US relations with Taiwan? These and other questions about the influence of lobbies in general, or in relation to foreign policy, are not easy to answer. It was often said that "special interest" dominated modern politics, but proving the precise influence of these "special interests' became more difficult the more one probed into specifics.

A pervasive difficulty in analyzing NGO influence centered around the concept of success. If once or more NGOs succeeded in helping a UN Security Council resolution creating a criminal court for Rwanda to be adopted, but the ad hoc court turned out to have little impact on the Great Lakes Region of Africa, could that be considered a success for NGO influence? But if later the ad hoc court contributed to the creation of a standing international criminal court at the UN, would the criteria for success change? If Amnesty International or the International Committee of the Red Cross prevented some instances of torture, how would one prove that success since the violation of human rights never occurred? If NGOs in Bosnia helped reduce political rape and murder but in so doing, by moving vulnerable civilians out of the path of enemy forces, they thereby contributed to ethnic cleansing and the basic political objective of fighting party, was that a success?

In dealing with the sometimes elusive notion of success or achievement, sometimes it helped to distinguish among the following: success in getting an item or subject on the agenda or discussion, success in achieving serious discussion, success in getting procedural or institutional change, and finally success in achieving substantive policy change that clearly ameliorated or eliminated the problem. In the early stages of campaigns against slavery or female genital mutilation, it could be considered remarkable success just to get high state officials to think about the subject as an important problem.

Relatively, one of the most helpful contributions that a human rights NGO or movement could obtain was the supportive finding of an epistemic community. Epistemic communities are networks of scientists or "thinkers" who deal in "truth"

as demonstrated by cause and effect. To the extent that there is widespread agreement on scientific truth, public policy tends to follow accordingly-albeit with a time lag during which advocacy or lobbying comes into play. If the scientific evidence of the harmful effects of "second-hand smoke" were stronger, those campaigning against smoking in public and indoor places would have an easier time of it. When medical personnel showed conclusively that female genital mutilation present clear risks to those undergoing this cutting ritual in Africa and other places, the reporting and dissemination of this truth aided those human rights groups trying to eliminate this practice. Unfortunately, most decisions in support of international human rights involved political and moral choice rather than scientific truth.

The greatest obstacle to proving the influence of human rights NGOs was that in most situations their influence was merged with the influence of public officials in the context of other factor such as media coverage. Private human rights groups had long urged the creation of United Nations High Commissioner for Human Rights, and the post was voted into being in 1993. Many private groups wanted to claim credit, but many governments had also been active in support of this cause. The UN Vienna Conference, made up of governments, had approved the plan. Salient personalities like former President Carter had campaigned vigorously for the creation of the post. And frequently media coverage is at work as well.

In some situations it is relatively clear that human rights NGOs, or a coalition of them and their allies, have had direct impact on what might be termed a human rights decision. A strong case can be made that human rights NGOs, in combination with other actors such as media representative inter alia, have helped transform the political culture of Mexico, Argentina, and other states in the Western Hemisphere which now show more sensitivity to human rights issues.

In the meantime, human rights NGOs have helped create a climate of opinion in international relations generally sympathetic to human rights. In this regard these NGOs have helped restrict and thus transform the idea of state sovereignty. It can be stated in general that the responsible exercise of state sovereignty entails respect for internationally recognized human rights. States, like Iraq, that engage in gross and systematic violation of the most elemental human rights are not afforded the normal prerogatives that stem from the principle of sovereignty. During the 1990s Iraq was put into de facto receivership under United Nations supervision. This was because of the misuse of sovereignty via violations of human rights in Iraq and

Kuwait, combined with aggression against Kuwait. A similar analysis could be made about Milosevic in Yugoslavia. It is still valid to say, as Francis Fukuyama wrote, that in dominant international political theory, the most fully legitimate state is the liberal democratic state that respects civil and political rights. Advocacy groups for human rights play the basic role of reminding everyone of human rights performance, and particularly when gross and systematic violations occur that call into existence the basic right of a governmental to act for the state.

8.5. Private action for relief and development:

As we have seen, the International Bill of Rights contains economic and social rights such as the rights to adequate food, clothing, shelter, and medical care in peace time. International humanitarian law contains non-combatant rights to emergency assistance referring to similar food, clothing, shelter, and medical care in armed conflict. United Nations resolutions have extended these same rights to "complex emergencies", an imprecise term meant to cover situations in which the relevant authority denies that there is an armed conflict covered by international humanitarian law, but in which civilians are in need and public order disrupted. In a tradition that defies legal logic, private groups working to implement these socio-economic rights in peace and war are not normally referred to as human rights groups but as relief (or humanitarian) and development agencies. This semantically tradition may exist because many agencies were working for relief and development before the discourse on human rights became so salient.

Whatever the semantically tradition, there are complicated international systems for both relief and development, and neither would function without private agencies. At the same time, the private groups are frequently supported by state donations of one type or another, and frequently act in conjunction with inter-governmental organizations. With this advocacy groups, so with relief and development agencies, the resulting process is both private and public at the same time. In both relief and development, the United States and the states of the European Union provide most the resources. In both, UN agencies are heavily involved-UNICEF, the WHO, the World Food Program, the UN Development Program, etc. But in both, private grassroots action is, to a very great extent, essential to whether persons on the ground get the foot, clothing, shelter, and medical care which international law guarantees on paper. It is the private groups

that turn the law on the books into the law in action. It is the private groups that condition and sometimes transform the operation of state sovereignty.

8.5.1. Relief:

Because of international humanitarian law, the relief system in armed conflict and complex emergencies is somewhat different from that in peace time. The norms supposedly guiding action are different, and some of the actors are different. For reasons of space, only relief in wars and complex emergencies is covered here.

In so-called "man-made" disasters, the private International Committee of the Red Cross usually plays a central role because of its long association with victims of war and international humanitarian law. It was ultimately, for example, the best-positioned relief actor in Somalia in the 1990s, and remained so even after the arrival of tens of thousands of US military personnel. The ICRC does not monopolize relief in these situations, however. In Bosnia in the first half of the 1990s, it was the Officer of the UN High Commissioner for Refugees that ran the largest civilian relief program, followed by the ICRC. In Cambodia in the late 1980s, UNHCR and the ICRC were essentially co-lead agencies for international relief. In the Sudan during the 1970s and 1980s, UNICEF and the ICRC carried out important roles. But in these and similar situations, numerous private agencies are active in relief: World Vision, Church World Service, Caritas, Oxfam, Save the Children, Doctors Without Borders, etc. It is not unusual to find several hundred private relief agencies active in a conflict situation like Rwanda and its environ in the mid-1990s.

8.5.2. Relief : process:

One can summarize the challenges facing all these private relief agencies (aka socio-economic human rights groups).

1. *They must negotiate access to those in need.* One may speak of guaranteed rights, even a right to assistance. And in the 1990s there was much discussion about a right to humanitarian intervention. But as a practical matter, one must reach agreement with those who have the guns on the ground in order to provide relief/assistance in armed conflict and complex emergencies. Even if there is some general agreement between public authorities (de jure and de facto) and relief agencies on providing relief, specifics have to be agreed upon for particular times and places. Negotiating conditions of access can be a tricky business, as fighting parties may seek to divert relief for military and political objectives, even as relief

agencies may insist on impartiality and neutrality. With numerous relief agencies vying for a piece of the action, Machiavellian political actors may play one off against anther. Some of the smaller, less experienced agencies have proved themselves subject to political manipulation.

2. *Relief agencies must provide an accurate assessment of need.* Relief must be tailored to local conditions, and there should be control for redundant or unneeded goods and services. The use of systematic rape as weapon of war, terror, and ethnic cleansing has meant the need for gynecological and psychiatric services for many women.

3. *The private groups must mobilize relief in a timely and effective way.* Here the ICRC has certain advantages, as it is well known and respected by most western states, and has links to national Red Cross or Red Crescent societies in over 120 states. But other private agencies have their own means of mobilization, being able to tap into well-established religious or secular networks.

4. *Of obvious importance is the ability of a private group to actually deliver the assistance in a timely and costs-effective way.* Here gain the ICRC present certain advantages, as it is smaller and less bureaucratic than some UN bodies, has regional, country and intra-country offices is many places around the world (in addition to the national Red Cross/Red Crescent societies), and since the 1970s has built up experience in the delivery of relief in ongoing conflicts and occupied territory. Its reputation for effectiveness on the ground was particularly outstanding in Somalia. But other agencies, particularly the UNHCR, have been accumulating experience as well. And often the sheer size of a relief problem can be too great for the ICRC. In Rwanda in 1994 and thereafter, where as many as two million persons fled genocidal ethic conflict and civil war, the ICRC concentrated its activities inside Rwanda and left to other actors the matter of relief in neighboring countries.

5. *All relief agencies have to engage in evaluation of past action and planning for the future.* All of the major relief players do this, but some of the smaller, less-experienced, and more ad hoc groups do not.

The international system, movement, or coalition for relief in mandate disasters faces no shortage of pressing issues.

1. *Should there be more coordination?* There has been much talk about more coordination, but none of the major players wants to be dominated by any other

actor. Legally speaking, the ICRC is a Swiss private agency whose statute gives policy-making authority to an all-Swiss assembly that co-opts members from Swiss society only. It resists control by any United Nations body, any other Red Cross agency, or any state. Also, the UNHCR, UNICEF, the WHO, and the WFP all have independent budgets, executive heads, governing bodies, and mandates. Each resists control by any UN principal organ or by the UN Emergency Relief Coordinator (now the Under Secretary-General for Humanitarian Assistance) who reports to the Secretary-General. The latter UN office lacked the legal, political, and budgetary clout to bring the other actors under its control. Politically speaking, the major donors, the USA and the EU, have not insisted on more formal coordination. There are advantages to the present system. UNHCR may be best positioned in one conflict, UNICEF or the ICRC in another. And there was de facto cooperation among many of the relief actors much of the time, with processes for coordination both in New York and Geneva. More importantly, there was considerable cooperation among agencies in the field. Yet duplication and conflicts occurred with regularity; there was certainly room for improvement.

2. *Should one try to separate politics from humanitarian action?* Particularly the ICRC argued in favor of strict adherence to the principles of impartiality and neutrality, and preferred to keep its distance from "political" decisions which involved coercion or any official preference for on side over anther in armed conflict and complex emergencies. But even the ICRC had to operate under military protection in Somalia to deliver relief effectively (and had to accept military protection for released prisoners on occasion in Bosnia). In Bosnia, much of the fighting was about civilians – their location and sustenance. The UNHCR's relief program became "politicized" in the sense of intertwined with carrots and sticks provided in relation to diplomacy and peacemaking. There was disagreement about the wisdom of this course of action. But it was clear that one the UN authorized use of force in places like Bosnia to coerce a change in Serbian policy, then UN civilian (and military) personnel on the ground became subject to hostage-taking by antagonized Serb combatants. It was clear that the idea of a neutral Red Cross or UN presence for relief purposes was not widely respected in almost all of the armed conflicts and complex emergencies after the Code War. Relief workers from various organizations were killed in places like Chechnya, Bosnia, Rwanda, Burundi, Liberia, Somalia, etc. Other relief workers were taken hostage for

ransom. Sometimes armed relief, even "humanitarian war," seemed the only feasible option, but others disagreed;

3. *Could one change the situation through new legislation and/or better dissemination of norms?* It was evident from the Soviet Union to communist Yugoslavia, to take just two clear examples, that former states had not taken fully seriously their obligation to teach international humanitarian law to military personnel, desire the strictures of especially the 1949 Geneva Conventions and additional 1977 Protocols for the protection of victims of war. After especially the French failed to have codified new laws on humanitarian intervention in the 1990s, action turned to international criminal justice and the creation of international tribunals to try those individuals accused of war crimes, genocide, and crimes against humanity. NGO lobbied vigorously for these new norms and agencies to enforce them, s we have already noted. But much violence was carried out by private armies such as rebellion secessionist groups, clans and organized mobs. Relief workers more than once faced child soldiers on drugs armed with automatic weapons. How to make international norms, whether new or old, effective on such combatants was a tough nut to crack. It was said of Somalia, only in slight exaggeration, that no one with a weapon had ever head of the Geneva Convention. At least many of the relief agencies agreed on a code of conduct for themselves, which approximated but did not exactly replicate the core principles of the Geneva Convention.

8.5.3. Relief : Influence:

There is no question but that private actors have considerable if amorphous influence or impact in the matter of international relief in "man-made" conflicts. The ICRC was a major player in Somalia 1991-1995, the UNHCR and its private partners were a major player in Bosnia 1992-1995. The UNHCR does not so much deliver relief itself as contract with private agencies for that task. UNHCR manages, supervises, and coordinates, but private actors like 'Doctors without Borders' do much of the grassroots relief. To use a negative example of influence, if several private groups disagree with a policy decision taken by the UNHCR and decide to operate differently, the UNHCR is constrained in what it can do. The same is even more true for the World Food Program, which has a very limited capacity to operate in the field by itself. The ICRC, as should be clear by now, is a private actor whose norms and accomplishments often affect the other, players, directly or indirectly.

The challenge facing relief/humanitarian agencies is probably even greater than that facing more traditional human rights advocacy groups. The former are dealing with states and other primary protagonists that have resorted to violence in pursuit of their goals. The issues at stake have already been deemed worth fighting over. In this context of armed conflict or complex emergency, it is exceedingly difficult to get the protagonists to elevate assistance to civilians to a rank of the first order. Moreover, in all too many conflicts, especially after the Cold War, international attacks on civilians, and their brutal manipulation otherwise, became part of the grand strategy of one or more the fighting parties. It was therefore difficult if not impossible to fully notarize and humanize civilian relief.

8.5.4. Development : Process:

As in relief, the development process on an international scale presents a mixture of public and private actors. If we focus just on the PVOs based in the North Atlantic area we find they are exceedingly numerous perhaps now up to about 5,000 in number-and quite varied in their orientations. While some of these PVOs or VOLAGs reject state funding to protect their independence, and consequently wind up frequently on the margins of the development process, most act otherwise and serve as conduits for public monies and public polices, PVOs themselves provide only about 10 per cent of development assistance in a typical years.

Private development agencies, like Oxfam, that cooperate with pubic authorities and operate consistently across international borders are a crucial part of the public-private development process. These development NGOs provide values and services often lacking in the public sector: "smallness, good contacts at the local level, freedom from political manipulation, a labor-rather than capital-intensive orientation, innovativeness, and Flexibility in administration."

8.5.5. Development : influence:

Private development agencies faced no lack of problems in trying to help achieve sustainable human development in keeping with internationally recognized human rights. A new barrier in the 1990s as that the prevalence of ethnic conflict and other forms of internal armed conflict and political instability caused public authorities to channel vast amount of resources into relief. Consequently, fewer funds and less attention went to development.

A historical problem was that PVOs and VOLAGs did not always think of development in relation to human rights, although with time there was a shift

toward focusing on empowerment which was a synonym for participatory rights. This shift was certainly welcomed by those development NGOs that had long expressed concern about authoritarian rather than democratic development.

Development NGOs, much like traditional advocacy NGOs for human rights, had trouble in precisely specifying their influence in the development process vis-à-vis other actors as with the advocacy groups, many leaders of development NGOs were active out of moral commitment and would continue with their ideas and objectives whether or not they were able to change public programs to their liking. as with advocacy groups, the real influence of development NGOs was to be found in their amorphous contribution to a wider movements, network, or coalition interested in sustainable human development. While true that public authorities provide most of the capital for development projects, some influence flows from the NGOs back toward public authorities-especially through the give and take over different approaches to development. Public authorities have no monopoly over ideas related to development, and some of the ideas that prove controlling over time originate with NGOs.

8.6. Sum Up:

Human rights NGOs work covers a wide range of issues. There are NGOs which focus on a whole set of rights or issues for example civil and political rights, and there are those which focus on specific rights or issues. Human rights NGOs apply various strategies in their work towards achieving compliance with international human rights standards. Human rights NGOs fulfil several important tasks with regard to the observation and implementation of existing international law standards. This constitutes the main area of activity for most NGOs. Cooperation between national and international NGOs can lead to greater compliance by governments with their obligations under international human rights and humanitarian law.

8.7. References :

1. Margaret E Keck and Kathryn Sikkink, “Activists Beyond Borders”.
2. Further Don Habert, “Inferring Influence, Gauging the impact of NGOs”.

8.8. Check your progress:

A. Which of the following statements are true :

1. NGO Amnesty International was founded in London in July 1980.

2. The main objective of NGO TRA IL is the fight against impunity for the most serious crimes: genocide, crimes against humanity, war crimes etc.

3. The world organization against torture is the world's largest coalition of nongovernmental organization fighting against arbitrary detention, torture force disappearances and other form of violence.

4. The oldest and best funded human rights NGOs are based in the East Asia.

B. Fill in the blanks

1. ………………………is an NGO, Switzerland, founded in 2002 and based in Geneva.

2. The number of advocacy groups of various human rights causes…………..in the last quarter of the……………………

3. The greatest obstacle to proving the…………………of HR NGOs was the merger of influence of…………………….in the context of other factor.

8.9. Check your Answers:

A. 1. False

2. True

3. True

4. False

B. 1. Trail

2. Grew dramatically, twentieth century

3. Influence, Public officials

8.10. Terminal Questions:

1. Describe the role of NGOs in protecting human rights.

2. Evaluate the role of private advocacy in protecting human rights.

3. Enumerate the basic hurdles towards the development of private advocacy and NGOs relating to human rights nourishment.

UNIT-9

Specific Human Rights Conventions Relating to Women and Children

Structure:

9.1. Introduction
9.2. How the Women's Human Rights movement evolved?
9.3. CEDAW
9.3.1. Adaptation of CEDAW
9.3.2. Protection of Women Rights under CEDAW
9.3.3. Important Provisions Relating Women Rights
9.4. The optional protocol and the enforcement mechanism of Women's Rights under it
9.4.1. Background of the optional protocol
9.4.2. The Communication of complaint
9.4.3. The Inquiry Procedure
9.5. Child Rights
9.5.1. Introduction
9.5.2. Changing Perceptions of children and their rights
9.6. What are the links between the Human Rights of women and children
9.6.1. Using human rights a strategy for development
9.6.2. How the conventions for women and children compliment one another?
9.6.3. Monitoring compliance with the two conventions
9.6.3.1. The Committee on the Elimination of Discrimination Against Women
9.6.3.2. The Committee on the Rights of the Child
9.7. Sum Up
9.8. References
9.9. Check your progress
9.10. Answers to check your progress
9.11. Terminal questions

Objectives:

After going through the unit you should be able to :

- Know the need of separate laws to protect human rights of women and children.
- Understand the nature and extent of international legal protection provided to women and children
- Comprehend the links between the human rights of women and children

9.1. Introduction:

Every person has rights simply by virtue of being human. These rights universal legal guarantees that represent the minimum standards required for individual to live in dignity and with equal opportunity-cannot be taken away. Since the Universal Declaration of Human Rights was adopted in 1948, human rights have become codified in international, regional and national legal systems.

Human rights law obliges States to do certain things and to refrain from doing others. For example, States have an obligation to provide every individual with the opportunity for education. At the same time, they have the duty to reject any action that may result in discrimination against a group of individual in exercising that right on the grounds of race, color, sex, language, political or other opinion, national or social origin, property, birth or other status.

Under international human rights law, States have the obligations to respect, protect and fulfill human rights. The obligations to respect mean that States must refrain from interfering with or curtailing' the enjoyment of their human rights through laws, policies, programmes or practices. The obligation to protect requires them to safeguard individuals and groups against human rights abuses by others. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights through the creation of relevant procedures and institutions, the adoption of laws and policies, and by ensuring enforcement and adequate funding.

Human rights are universal. They apply equally to men and women, girls and boys. Women, for example, are entitled to the same rights to life, education and political participation as men. However, in practice, these rights are violated every day in multiple ways-in virtually every country in the world.

Gender equality and women's rights are key elements in the Universal Declaration of Human Rights. Yet it was later recognized that certain rights are specific to women, or need to be emphasized in the case of women. These rights are outlined in subsequent international and regional instruments, the most important of which is the Convention on the Elimination of All Forms of Discrimination against Women.

9.2. How the women's human rights movement evolved:

The women's human rights movement evolved, in part, because of limitations in the UN human rights system-a system that dated back to 1945 and focused primarily on curtailing powers of the State. The emphasis at the time was on civil and political rights rather than social, economic and cultural rights, which are central to women's everyday lives.

Such gaps became evident in the 'development decades' of the 1960s and 1970s. During this time, for example, positive advances were made in agriculture and food production. However, they failed to acknowledge that, in most parts of the world, women were the primary producers of food. New technologies were developed, but women were often excluded from access and training. Furthermore, land reforms were initiated, but failed to recognize that women were often restricted from owning land. As a result, women were displaced from many of their traditional roles and disempowered. Later development efforts emphasized employment and income-generation for women and recognized the importance of the informal sector and women's critical role in it.

As women's role in the development process was increasingly acknowledged, the concept of 'women in development' (WID) emerged in response to women's unequal status. The WID framework:

❖ Refined the concept of development to go beyond the economic dimension.

❖ Acknowledged gender roles that recognize different needs, skills and access to resources.

❖ Asserted that equality in gender roles was essential to equality in development.

In the 1980s and 1990s, advocacy on the part of women within the UN system, as well as among non-governmental organizations, resulted in a number of specific instruments and institutions to promote women's rights. However, as these became

operational, there was some evidence that recourse to separate, women-specific institutions contributed to the sidelining of women's interests. In response, women began to push for the mainstreaming' of women's concerns into the larger human rights system, as well as organizational systems and mandates. And, gradually, the term and concept of women in development was replaced by an increased focus on gender analysis and mainstreaming, combined with temporary special measures to facilitate the empowerment of women and equality in specific areas.

The strategic use of UN conferences and forums to put women's human rights on the international agenda has resulted in many advances. Continued action is needed, however, particularly to overcome the following obstacles:

❖ Failure to recognize human rights universally: Despite progress, many women still enjoy far fewer of their human rights than men.

❖ The 'public'/'private' split: In many parts of the world, human rights stop at the door of the family home, where many of the most egregious violations against women occur.

❖ Neglect of social and economic rights: Whereas civil and political rights restrain governments and have immediate application, social and economic rights are to be 'progressively realized' as resources permit and require government action at many levels. Thus, enforcement is more challenging. Nevertheless, these rights often have the greatest impact on women's daily lives.

❖ Weak human rights promotion, monitoring and enforcement at national and local levels.

9.3. CEDAW:

9.3.1. Adaptation of CEDAW:

CEDAW was adopted in 1979 and entered into force two years later. It defines the right of women of be free from all forms of discrimination and sets out core principles to protect this right. It also establishes an agenda for national action to end discrimination and provides the basis for achieving equality between men and women. It does so by affirming women's equal access to and equal opportunities in political and public life as well as education, health and employment. CEDAW is the only human rights treaty that affirms the reproductive rights of women.

By February 2010, CEDAW had been ratified by 186 States-more than most other international treaties. The Optional Protocol to CEDAW, which entered into force in December 2000, lays out procedures for individual complaints on alleged violations of the Convention by States parties. It also establishes a procedure that allows the Committee that monitors implementation of the Convention to conduct inquiries into serious and systematic abuses of women's human rights in countries. By February 2010, the Protocol had been ratified by 99 States.

9.3.2. Protection of women rights under CEDAW:

CEDAW provides a broad definition of discrimination against women, illustrating the point made that international law often provides broader protections than domestic law. CEDAW expands the notion of equality for women beyond that currently embraced by most national laws. Under CEDAW, the term 'discrimination against women' shall mean 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 a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The treaty provides for women's rights in various areas such as government and political life, education, employment health care, and other areas of social and economic life. It also provides for special protections for women such as "temporary special measures" to advance women and to protect maternity. At present, there are 186 member states and 98 signatories of CEDAW. Like all specialist treaties, the CEDAW is monitored by an expert committee namely Committee on the Elimination of All Forms of Discrimination against Women (hereinafter, the 'Committee'.)

However, the main aim of CEDAW, i.e., revamping the weak mechanism for protection of human rights of womankind would have been hard to achieve without the elaboration of the Optional Protocol to the Convention. The shortcomings of CEDAW could only be rectified through the adoption of this Optional Protocol. Since 1997, the Committee has met twice a year (for a total of four weeks). An Optional Protocol was drafted in 1999 to provide a complaint process for individuals to petition the Committee regarding violations by states parties. The Optional Protocol entered into force in December of 2000. The Optional Protocol also gives the Committee the power to examine grave or systematic violations by a state party, including a visit to the state. However, the Committee must 'invite' the

cooperation of the state with the inquiry and the state party must consent to any visit. The inquiry must also be conducted confidentially.

The complaint mechanism for violation of women's rights under the CEDAW and the implementation of the same is largely directed by this Optional Protocol. The Committee plays an important part in this regard, also following the provisions of the Protocol. The Committee can transmit its 'views' and 'recommendations' to the parties concerned (Article 7(3)).

9.3.3. Important Provisions Relating women Rights:

The goal of the Convention is to go beyond existing human rights conventions, many of which nominally entitle the equal application of their respective human rights laws to men and women, so as to provide more focused protection of human rights for women. As the drafters of the Convention understood, systematic obstacles originating in the historic discrimination faced by women in all societies have inhibited the equal application of international human rights laws. Thus the essence of the Convention, as articulated in Article 1, is to focus on the elimination of such discrimination, in all its forms, that has either the "purpose" or "effect" of limiting women's full participation and development in their respective societies.

This expansive definition of discrimination is the cornerstone of the Convention. Building on the goal of eliminating discrimination in all its forms, the Convention both identifies various realms in which women face heightened levels of discrimination and proposes means by which discrimination in these realms can be overcome. Articles 2 through 16, the substantive provisions of the Convention, spell out measures and policies that countries "shall" undertake to achieve the goal of eliminating discrimination, which include embodying the principle of equality in constitutions or legislation, repealing discriminatory penal codes; adopting "temporary special measures" for women; ensuring equal access to education, employment, and health care; giving women the right to undertake financial and other transactions in their own name; and protecting the special needs of women in developing countries. In order to monitor compliance with these substantive obligations, the Convention establishes, via Article 17, a monitoring body, the Committee on the Elimination of Discrimination against Women (CEDAW), whose task is to continually observe and direct State Parties' behavior and performance of their Convention obligations. The treaty operates in the context of progressive development. In addition to requiring States to make good faith efforts

to eliminate all forms of discrimination against women, this idea further obligates States to only improve, and never diminish, existing women's rights.

The Convention further transcends the scope of other human rights treaties in its commitment to addressing discrimination by non-State actors, including any person, organization, or enterprise. In addition, the preamble of the Convention makes a commitment to supporting women's rights in the private spheres of women's lives. It states, “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality.” In this regard, the Convention recognizes the influence of culture and tradition in restricting women's enjoyment of rights. Article 2 refers to “customs and practices which constitute discrimination”. Article 24 underscores Articles 2 and 3 by requiring State Parties “to adopt all necessary measures… aimed at achieving the full realization of the rights recognized in the present Convention.” Articles 2, 3, and 24 accordingly impose obligations of means to be pursued “without delay” toward the ultimate result. Article 5 calls on State Parties to modify social and cultural pattern to eliminate prejudices and stereotyping; and Article 9 requires State Parties to recognize a woman's nationality, regardless of the nationality of her husband, when protecting her rights. Article 11 prohibits dismissal from employment on grounds of marriage or maternity and calls for the provision of maternity leave and social services to enable parents to combine family obligations with employment and participation in public life. Article 16 covers equal rights and responsibilities in marital and familial relationships.

Not surprisingly, these are the provisions of the Convention (particularly Articles 2 and 16) that are the most contentious in terms of their interpretation and implementation by State Parties. These provisions reflect some of the essential dilemmas facing women's equality, including whether women can or should be viewed as equal to men, or whether their unique reproductive functions, marriage, and religious/cultural group membership support differential treatment. While the Women's Convention symbolizes an international consensus that women's equality need not be limited by these conditions, the numerous reservations and uneven adherence to the Convention has shown that symbolic measures cannot ensure equality for women.

9.4. The Optional Protocol And The Enforcement Mechanism Of Women's Rights:

9.4.1. Background Of The Optional Protocol:

In response to the demands of international women's rights advocates to address the various problems with the enforcement of the Women's Convention, the forty-third session of the Commission on the Status of Women (CSW) adopted an Optional Protocol to the Women's Convention in March 1999. The Protocol is the product of several years of formal and informal discussions following the 1993 World Conference on Human Rights in Vienna and four years of formal drafting negotiations in the Open-Ended Working Group that met alongside the regular meetings of the CSW. The Open-Ended Working Group consisted of voluntary representatives from U.N. member States who wished to contribute to the development of the Protocol. The Protocol was adopted by the General Assembly in October 1999, and as of July 30, 2001, it has been ratified or acceded to by twenty-four State Parties; it is currently in operation in those States.

9.4.2. The Communication Of Complaint:

The communications procedure allows women within the jurisdiction of a State Party to bring a claim to CEDAW against their government for an alleged violation of the Convention.' Claims can include allegations of violations by the State of any obligation under the Women's Convention. The Protocol establishes explicit procedures for the Committee to inspect communications for relevance to the Convention, adherence to the procedural requirements of admissibility, and ultimate determination on the merits.

CEDAW's role under the communications procedure includes the review of complaints by individuals or groups relating to alleged State violation of the Convention. Various provisions of the Protocol define CEDAW's review of communications. Article 4(2) sets out specific admissibility criteria to which a communication must conform before it can be reviewed on its merits by CEDAW. Like similar instruments, the communications procedure limits CEDAW from reviewing complaints that have not already attempted resolution through domestic channels. While this remains a default requirement in the Optional Protocol, the communications procedure does allow CEDAW to consider exceptions to this provision if it finds that "the application of such [domestic] remedies is

unreasonably pro-longed or unlikely to bring effective relief." Further, the Protocol has empowered CEDAW to recommend that the relevant State Party take interim measures if CEDAW finds that the alleged violation can cause irreparable damage to the victim or victims of the violation.

9.4.3. The Inquiry Procedure:

The purpose of the inquiry procedure is to provide CEDAW with the power to investigate a situation in which it is clear that there are grave or systematic violations of the Convention within a State Party. The procedure-which could be used to address serious but isolated violations, such as a case of sati, or widespread violations, such as trafficking in women or violations of women's human rights in situations of armed conflict-allows for timely focus on particularly egregious or large-scale abuses of women's rights. The procedure is unique in that it goes beyond those in other human rights conventions that place constraints on who may initiate an inquiry. The Optional Protocol to the Women's Convention, places no restrictions on who may initiate a claim against a State Party. It only requires that the party initiating the inquiry offer relevant proof of the alleged violation.

9.5. Child Rights:

9.5.1. Introduction:

Every individual has rights. However, as with women, certain rights are specific to children or need to be reinterpreted in the case of children. These rights are outlined in the Convention on the Rights of the Child.

The Convention was adopted in 1989-a decade after CEDAW-and entered into force in 1990. The framers of the Convention recognized that those under 18 years of age have specific needs. Moreover, they wanted to make certain that the world recognized that children have human rights, too.

The Convention on the Rights of the Child spells out the basic human rights of children worldwide: the right to survive; to develop to the fullest; to protection from harmful practices, abuse and exploitation; and to participate fully in family, cultural and social life.

The four core principles of the Convention are non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child.

By February 2010, 193 out of 195 States had become party to the Convention on the Rights of the Child-more than for any other human rights treaty.

9.5.2. Changing perceptions of children and their rights:

The recognition of children's rights grew out of the wider crusade for human rights, specifically those of women. Indeed, perceptions of the two groups were largely similar early on. In the 18th century, for example, both women and children were generally regards as a form of property.

The 19th century marked the birth of the 'Child-saving' movement, which spurred the growth of orphanages, the development of schooling, and the construction of separate institutions, including juvenile courts for children in conflict with the law. Still, children were perceived largely in terms of their usefulness to adults: their purpose was to carry on the family name and to look after the elderly.

The legal rights of children were recognized in the late 19th and early 20th centuries, when the first legislation concerning children was drawn up. Child-labour and compulsory-education laws were established to protect children. And as the concept of welfare developed, the needs of children became an important agenda for the State.

The end of World War I drew attention to the suffering of children as innocent victims in the face of violence. One prominent child advocate, who organized emergency relief for children affected by the Allied blockade following the war, formed the foundation of what has become the International Save the Children Alliance. She also advanced the notion that children must be the first receive relief in times of distress.

The adoption of the Universal Declaration of Human Rights in 1948-which stated that "All human beings are born free and equal in dignity and rights"-was a turning in the recognition of children as rights holders. The International Bill of Rights further cemented this view and became the fundamental, legally binding instruments through which effective advocacy and implementation of human rights-including children's rights-were based. The first binding international instrument specifically focused on children's rights was the Convention on the Rights of the Child, which was the product of 10 years of negotiation (1979-1989) among government delegations, intergovernmental and non-governmental organizations.

9.6. What are the links between the human rights of women and children:

9.6.1 Using Human Rights a Strategy for Development:

The lives of women and children are tightly knit, as are their rights. Women and children have both been subjected to discrimination, so they share that experience. But it is also true that women's health and social and economic status-even before a child is born-is directly related to a child's prospects for survival and development. Historically, women have been the primary caregivers of children, and resources put in their hands are more likely to be used to benefit children than those given to men. Discrimination against women is thus detrimental not only to women themselves, but also to the next generation.

Protection of women's rights is important in itself. But it also tends to reap benefits for their children. Conversely, protecting the rights of children-particularly girls-is the first step in promoting gender equality for women. The stereotyping of gender roles and gender-based discrimination begins in childhood. Efforts to support gender equality must start there and address the roles of girls and boys, men and women, in the household.

Advocating for women's rights has been essential to advancing the situation of women. The same holds true for the promotion of children's rights and improvements in their ability to survive and thrive. However, if the rights of women and children are considered together, they can reinforce each other and make mutually supportive demands on society.

In 2003, the United Nations endorsed a Common Understanding of a Human Rights-Based Approach to Development Cooperation. In essence, the document states that human rights standards and principles should guide all development cooperation and programming and should lead to the realization of human rights as laid out in the Universal Declaration of Human Rights and other human rights instruments.

A human rights-based approach to development uses human rights legal instruments, such as CEDAW and the CRC, to hold States parties accountable. It relies on these instruments to guide development work and to asses' impact. Such an approach:

- ❖ Emphasizes programming processes as well as outcome. For example, it focuses on how police officers are trained to respond to complaints of gender-

based violence, not just the content of the training. It asks question such as: Does the training promote nondiscrimination? Did excluded groups have say in the creation of the training curriculum?

❖ Draws attention to the most marginalized populations, including those living in extreme poverty, especially disadvantaged children and adolescents; women survivors of violence and abuse; out-of-school youth; women and men living with disabilities or HIV; women engaged in sex work; minorities and indigenous peoples; refugees and internally displaced person; and aging populations.

❖ Works towards equitable service delivery. UNFPA, for example, advocates for universal access to reproductive health. Initially, work may focus on the most excluded population. But the ultimate goal is to ensure that everyone has equitable access to reproductive health services, goods and information.

❖ Extend and deepens participation. Even the most excluded groups are encouraged to become involved at all stages of the programming cycle. This may require building the capacity of adolescents and others so that they are capable of participating fully in programmes intended to benefit them.

❖ Promotes local ownership of development process through an emphasis on participation, inclusivity and accountability, and focus on developing the capacities of both those who are claiming their rights ('rights-holders') and those whose duty it is to fulfill those rights ('duty-bearers').

❖ Strengthens the accountability of all actors by insisting on a process that builds transparency and accountability at every stage of the programming cycle.

9.6.2. How the conventions for women and children complement one another:

There are a number of reasons why the CRC and CEDAW – read together- can enrich promotion and protection of women's and children's rights. First, the provisions of the CRC and CEDAW overlap in many areas and reinforce each other. Second, in some instances, one convention addresses an issue of concern to women or children that the other does not. Consequently, reading the two conventions together provides a more comprehensive picture. Finally, as noted earlier, while the protection of women's rights is important in itself, it is also important for the achievement of children's rights. The converse is also true. Thus the two conventions are complementary and mutually reinforcing.

Both conventions, for example, contain provisions ensuring equal access by women and girls to health-care services and education. Yet only CEDAW explicitly encourages affirmative action to right historical wrongs with regard to inequality and discrimination. Since CEDAW is not age specific, its provisions apply to females throughout the life cycle-from infancy to old age.

One of the most important features of the CRC is the protection if offers girls. The CRC is the only major human rights instruments currently in force that consistently uses both male and female pronouns, making it explicit that the rights apply equally to girls and boys. It also confers certain rights t women in their material role: for example, it obliges States parties to provide pre-and post-natal care to expectant mothers along with family planning education and services. The CRC also promotes gender equality by emphasizing the common responsibilities of both parents for the upbringing and development of the child.

Both CEDAW and the CRC reach into the public and private spheres and recognize the certain situations demand state intervention. Article 16 of CEDAW, for example, provides for equal rights in marriage and family life. Article 18-20 of the CRC recognize parent's primary responsibility for raising their children, but assert that the State has secondary responsibility should parents neglect their duties. Among the principles shared by both conventions are:

- Accountability: Duty bearers (primarily the State, but also the parents, teachers and others) need to be held accountable for their obligations and responsibilities. System of accountability may include legal redress, but can also be promoted more broadly by fostering transparency and a free media.
- Universality: All people, by virtue of being human, are holders of human rights.
- Indivisibility: All rights have equal status and are interdependent. The promotion of one right does not justify violation of another right.
- Non-discrimination: All individuals are entitled to human rights without discrimination of any kind on the basis of race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status.
- Participation: All individual are entitled to active, free and meaningful participation in the fulfillment of their rights.

9.6.3. Monitoring compliance with the two conventions:

To monitor compliance with the various human rights treaties and to investigate alleged abuses, treaty bodies and other mechanisms have been set up. Treaty bodies are committees of independent experts, nominated and elected by States parties, that monitor implementation of international human rights agreements. These treaty bodies include the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.

9.6.3.1. The committee on the elimination of discrimination against women:

Composed of 23 independent experts, the CEDAW Committee monitors progress for women in countries that are party to the Convention. During its annual sessions, the Committee reviews national reports submitted by State parties within one year of ratification or accession, and every four years thereafter. Non-governmental organizations may also submit parallel 'shadow' reports for consideration by the Committee.

In discussions with government officials, Committee members are given the opportunity to comment on national reports and obtain additional information, as necessary. The Committee then makes concluding observations with specific recommendations aimed at redressing gender inequalities in all areas covered under the Convention, including political participation, education, sexual and reproductive health, and the situation of women in rural areas. The committee also makes general recommendations on any issue that imply discrimination against women or that effects the implementation of the Convention. For example, in a 1989 session, the Committee requested information from all countries on the incidence of violence against women. In 1992, the Committee adopted General Recommendation 19, which recognized that gender-based violence is a form of discrimination that inhibits women's ability to enjoy their rights and freedoms on a basis of equality with men. It recommended that State take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act, and to ensure that laws against family violence and abuse, rape, sexual assault and other forms of gender-based violence give adequate protection to all women, and respect their integrity and dignity. 14 As of February 2010, the Committee had adopted 26 general recommendations.

An Optional Protocol to the Convention, which entered into force on 22 December 2000, recognizes the competence of the Committee to receive and consider communications from individuals or groups on alleged violations of CEDAW.

9.6.3.2. The Committee on the Rights of the Child

The Committee on the Rights of the Child monitors compliance with the CRC and implementation of two Optional Protocols: one on the involvement of children in armed conflict and the other on the sale of children, child prostitution and child pornography.

All States parties to the CRC are obliged to submit regular reports-within two years after ratifying the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of concluding observations. It also reviews additional reports that must be submitted by States that are party to the two Optional Protocols. The Committee cannot consider individual complaints, although child rights violations may be raised before other relevant committees that do so.

The Committee has vigorously addressed gender in the context of children's rights by requiring that data in country reports be disaggregated by sex by holding special sessions on issues related to girls. It has also raised issues specific to girls when considering States' reports, including the legal equality of girls, inheritance rights, teenage pregnancy rates, the situation of girls in single-parent female-headed households and maternal health care.

An inquiry procedure enhances enforcement of the Women's Convention for several reasons. First, individual communications may fail to reflect the widespread and systematic nature of certain violations. This is especially important in the context of women's rights violations, many of which occur informally, based on unofficial cultural practices. Second, in situations of very serious or widespread violations, individuals or groups may face acute dangers of reprisal when attempting to submit communications. Again, women who witness or experience such violations often tend to lack the ability to act alone or take a public stand on such issues for fear of being shunned or punished by their communities or families. Third, the experience of the Committee Against Torture (CAT) suggests that an inquiry procedure allows an international body to address a broader range of issues than it is able to in the context of individual communications.

The experience of CAT demonstrates that an inquiry procedure provides the international monitoring body with an opportunity to recommend measures to combat the structural causes of violations. While an inquiry procedure currently exists under the Commission on the Status of Women (CSW), known as the CSW Communication Procedure, this mechanism has failed to establish itself as a robust and effective avenue for responding to allegations of serious violations of women's rights in individual countries. On the one hand, the procedure was designed as a petition procedure to provide the CSW with information to assist in policy formulation, not to highlight a State's inadequate implementation of the Women's Convention or provide redress for women facing immediate violations of their rights. Furthermore, the scrutiny of communications under the CSW's procedure is carried out by government representatives rather than by independent experts. As such, its members serve the political interests of their respective governments before the objectives of international women's rights law. Thus the CSW's procedure has proven to be an inappropriate forum for conducting meaningful inquiries into serious and systematic violations of women's rights.

9.7. Sum Up:

The Women's convention has been referred to as the 'definitive international legal instrument' requiring respect for and observance of the human rights of women. The understanding that existing international human rights laws were not effectively addressing the specific disadvantages and injustices faced by women, it led to the convention on elimination of all forms of Discrimination against Women (CEDAW) being adopted as an international convention in 1979.

But both, the weak enforcement mechanisms and the general acceptance of the numerous reservations to the fundamental obligations of the CEDAW indicate the larger lack of commitment to the basic norms and values that inform the international women's rights regime. Some have criticized the Convention as acting only as a symbolic commitment to these norms and values. Whether or not one accepts these critiques, it is undeniable that the challenges to achieving the Convention's goal of equality and non-discrimination go beyond the limited effectiveness of its original procedures even if these procedures were to work perfectly. Even if it is agreed that the principles and values that inform the Convention are fundamentally sound, something more is clearly needed to link these principles with the elimination of the concrete forms of discrimination still

faced by women. Promoting these principles in various real-life contexts will be crucial to the Convention's long-term ability to improve the status of women in society.

Prior to the adoption of the Optional Protocol, the Convention offered no direct mechanism or incentive for States to reconcile their commitment to the norms and principles of the Convention with the conflicting norms rooted in domestic laws and practices. Yet the recent procedural innovations to the Convention embodied in the Optional Protocol which have been discussed in detail earlier have the potential to surmount this fundamental challenge, and it is absolutely necessary in the context of internationally protected women's rights that it can do so.

The human rights were in the past a luxury of male rational agents. However, in the mid nineteenth century other groups started to engage in struggles to challenge the exclusivity enjoyed by some over rights. One example of this is the emergence of the woman's movement as a new force against male hegemony. At this same time the children's rights movement starts to mobilize. There is an interesting difference between the children's rights movement and other civil rights movements. While other civil rights groups were organized by members of the concerned groups, the children's rights movement was not organized by children themselves but by groups which thought their moral obligation was to protect the Western ideal of childhood as a time of play and innocence.

Eventually, in 1924, the United Nations adopted the Declaration of Children's Rights. In 1959 the declaration was expanded and the Declaration on the Rights of the Child was adopted. Both of these declarations were mainly 'moral' in character and derived from a belief that all children should have the right to a childhood as a time of play, innocence and protection from the adult world. However, neither took into consideration cultural differences among the United Nations members, or what children themselves had to say. Then, due to a renewed interest on children and children's rights, the 1959 Declaration was replaced in 1989 with The United Nations Convention on the Rights of the Child (CRC). Unlike previous such documents, the CRC have received major support from national governments and child rights advocates. A special United Nations Commission is responsible for monitoring each countries performance and compliance with the CRC. However, the United Nations has no powers to penalize countries that are found breaching the rights of children as established by the Convention.

As in previous such documents, the CRC does not take into consideration cultural differences. On the contrary, it maintains its commitment to Western thought and its ideal of childhood. Thus, the CRC contributes to the normalization of children and childhood according to Western norms and moral values. As Stephens (1995: 32) observes: "some critics of the Convention argue…that its declaration of universal children's rights gives children the right to be remade in the image of adults and non-Western childhoods the right to be remade in Western forms." Thus, rights discourses are grounded on the same premises of liberal thought that rights advocates wish to reject, namely its moral stances and its insistence on rationality as a measuring rod for competence, and the CRC is itself mainly 'moral' in character.

Humanitarian discourses claim to be neutral (Hart, 2006). However, the humanitarian discourse adopted by the CRC is far from this ideal neutrality, as the discourse adopted by the CRC is that the Western ideal of childhood is to be adopted as the measurement of the moral integrity of all nations. Nations which are unable or unwilling to adopt this ideal are judged to be immoral and in need of salvation. Pupavac (2001: 101) notes that, "although children's rights advocates are self-consciously not paternalistic, they evince paternalism towards whole populations who are deemed incapable of determining their own lives and values without outside intervention." Interventions in other states, or in the family, are then justified in the name of children's rights.

This, according to Hart (2006: 6), "fuels ethnocentric disdain", while Pupavac (2001: 100) believes that it encourages a "misanthropic view of adulthood." The CRC ignores the different levels of economic development around the world and what can be realistically achieved by each country according to wider social, political and cultural circumstances and a general disenchantment with society at large.

According to Pupavac (2001), although the children's rights movement prefers to distance itself from past interventions carried out in a moralistic tone, most programmes targeting children still carry a preoccupation with the individual's moral development. She affirms that "while the rights-based approach consciously sought to move away from the earlier moralizing child salvation model, psycho-social rehabilitation reveals a similar preoccupation with deviancy, but conducted through the paradigm of psychological functionalism" (Pupavac, 2001: 95). As the Save the Children Alliance (2005: 6) has observed, "a lot of what is actually done

using rights based approaches in not radically different from what is done using other approaches." So, rights are argued for in terms of needs – the child has a right to what she needs in order to have a childhood as envisaged by Western societies.

There are three types of rights referred to in the CRC: rights to provision, rights to protection and rights to participation (Alderson, 2000). Rights to provision and to protection mainly deal with the perceived needs of the child as established by the different sciences and its technicians, such rights are catered for in the two previous declarations. It is the right to participation that is hailed as the main achievement of the CRC. However, it is also the most problematic set of rights. Participation as established by Article 12 does, in most cases, conflict with other rights, such as the right to parental guidance established by Article 5. Moreover, the right to participate as enshrined by article 12 does not guarantee a de facto right for the equal participation for all the worlds' children, as one can only make claims to rights when one is aware of those rights. Most children, both in the North, but especially in the South, are not made aware of these rights as often they are regarded as still dependent and not yet mature enough to exercise their rights. Ironically enough, they were not even consulted on the drafting of the CRC.

9.8. References:

1. H.O. Agarwal. International Law and Human Rights
2. U.N. Charter
3. Reports of Amnesty International

9.9. Check your progress:

A. Fill in the blanks

1. CEDAW was adopted in…………………………
2. The implementation of complaint mechanism under CEDAW is directed by the………………………….
3. CRC was adopted in……………………..
4. ………………..refers to "customs and practices which constitute discrimination".
5. The definition of "child" is given in CRC under ……………

B. True or False

1. Article 11 of CEDAW prohibits dismissal from employment on grounds of marriage or maternity and calls for the provisions of maternity leave etc.
2. CEDAW provides a broad definition of discrimination against women, thus, provides broader protections than domestic law.
3. The child is not provided with the freedom of association and to freedom of peaceful assembly.
4. The preamble of CRC sets the objective that a child must be brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.
5. The articles 15 to 17 of the CRC imposes primary responsibility of bringing up the children on the parents and secondary responsibility is upon the state.

9.10. Answers to check your progress:

A. Fill in the blanks
1. 1979
2. Optional Protocol to the Women's convention
3. 1989
4. Article 2
5. Article 1

B. True or False
1. True
2. True
3. False
4. True
5. False

9.11. Terminal Questions:

Q1. What is the need of separate laws or conventions for the protection of rights of child and women?

Q2. Discuss the nature and extent of protection provided under the CEDAW and CRC.

Q3. Discuss the common protection provided by CEDAW and CRC. Whether implementation of both conventions jointly will have positive effects?

UNIT-10

SPECIFIC HUMAN RIGHTS CONVENTIONS RELATING TO INHUMAN TREATMENT AND LABOURERS

Structure:

10.1. Introduction
10.1.1. Key words and meanings
10.2. Some Important Provisions of the CAT
10.3. Convention against Torture and other cruel, Inhuman or Degrading Treatment or punishment.
10.4. Some important provisions regarding protection of Labours Rights.
10.4.1. Freedom of Association & Protection of the Right to Organize Convention
10.4.2. Right to Organize & Collective Bargaining Convention
10.4.3. Equal Remuneration Convention
10.4.4. Abolition of Forced Labour Convention
10.4.5. Discrimination (Employment & Occupation Convention)
10.4.6. Minimum Age Convention
10.4.7. Indigenous & Tribal Peoples Convention
10.4.8. Declaration on Fundamental Principles & Rights at Work
10.4.9. Worst Forms of Child Labour Convention
10.4.10. Maternity Protection Convention
10.5. Sum Up
10.6. References
10.7. Check your progress
10.8. Answers to check your progress
10.9. Terminal questions

Objectives:

After going through the unit you should be able to:

- Have an overview of the conventions relating to inhuman treatment and labourers.
- Understand the role of ILO in enforcing these conventions.
- Comprehend the importance of the prevention of torture and inhuman treatment.

10.1. Introduction:

When ratifying a human rights treaty, States parties accept certain responsibilities, including undertaking to review and amend domestic laws and policies to ensure they comply with the provisions of the treaty. States also agree to provide in initial report, and subsequent periodic reports, to the treaty body established to monitor implementation of the treaty.

The UN Charter, the International Bill of Rights and the Vienna Declaration on Human Rights impose on States the responsibility to cooperate in the realization of all human rights. In addition, there is a broadly-accepted understanding that States have the obligation to respect rights and refrain from interfering with their enjoyment; to protect rights against violations, including through ensuring adequate and accessible avenues of redress which rights are violated; and to fulfill these rights by taking positive action, including through appropriate legislative and administrative action, policies and the allocation of resources Human rights treaties only bind States that are parties to those treaties, unless particular provisions have attained the status of customary international law.

The abuses of labour and human rights range from discrimination and hazardous working conditions, to extortion, arbitrary detention, deportation and violence, including rape and murder. Women workers are particularly vulnerable to human rights violations. They face multiple levels of discrimination and a general lack of protections in place in the jobs available to them, such as domestic work.

Workers are a vital part of the global economy. The promise of decent working and living conditions drives the international movement of workers, both men and women, to seek out opportunities in other countries.

Torture is absolutely forbidden to subject any person to torture or to any treatment or punishment that is inhuman or degrading.

10.1.1. Key Words and Meanings:

Torture - deliberate infliction of severe pain or suffering, whether to punish or intimidate, or to obtain information.

Inhuman treatment - treatment which is less severe than torture but still causes serious physical and/or mental pain or suffering.

Degrading treatment - treatment arousing feelings of fear, anguish andinferiority or capable of humiliating and debasing the victim.

10.2. Some Important Provisions of the CAT:

The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) requires signatory parties to take measures to end torture within their territorial jurisdiction and to criminalize all acts of torture. Unlike many other international agreements and declarations prohibiting torture, CAT provides a general definition of the term. CAT generally defines torture as the infliction of severe physical and/or mental suffering committed under the color of law. CAT allows for no circumstances or emergencies where torture could be permitted.

Whereas a number of prior international agreements and declarations condemned and/or prohibited torture, CAT appears to be the first international agreement to actually attempt to define the term. CAT Article 1 specifies that, for purposes of the Convention, "torture" is understood to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes 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 a 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 an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Importantly, this definition specifies that both physical and mental suffering can constitute torture, and that for such suffering to constitute torture, it must be purposefully inflicted. Further, acts of torture covered under the Convention must be committed by someone acting under the color of law. Thus for example, if a private individual causes intense suffering to another, absent instigation, consent,

or acquiescence of a public official, such action does not constitute "torture" for purpose of CAT.

A central objective of CAT is to criminalize all instances of torture. CAT Article 4 requires States to ensure that all acts of torture are criminal offenses, subject to appropriate penalties given their "grave nature". State parties are also required to apply similar criminal penalties to attempts to commit and complicity or participation in torture. Accordingly, it appears that even though CAT requires States to take "effective measures" to prevent torture only within their territorial jurisdiction, this does not mean that States are therefore permitted to engage in torture in territories not under their jurisdiction. Although a State might not be required to take proactive measures to prevent acts of torture beyond its territorial jurisdiction, it nevertheless has an obligation to criminalize such extraterritorial acts and impose appropriate penalties.

CAT Article-5 establishes minimum jurisdiction measures that each State party must take with respect to offenses described in CAT Article 4. Pursuant to CAT Article 5, a State party must establish jurisdiction over CAT Article 4 offenses when.

- ❖ The offenses are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
- ❖ The victim was a national of that State if that considers it appropriate; or
- ❖ The alleged offender is present in any territory under its jurisdiction and the State does not extradite him in accordance with CAT Article 8, which makes torture an extraditable offense.

CAT Article 14 provides that signatory States must ensure that their legal systems provide victims of torture (or their dependent, in cases where the victims has died as a result of torture) with the ability to obtain civil redress in the form of "fair and adequate compensation including the means for as full rehabilitation as possible." According to the State Department, Article 14 was adopted with an express reference to this treaty obligation extending only to "the victim of an act of torture committed in any territory under [a signatory State's] jurisdiction," but this limiting clause was "deleted by mistake.

CAT Article 16 requires signatory States to take preventative measures to prevent "cruel, inhuman, or degrading treatment or punishment" within any territory under their jurisdiction when such acts are committed under the color of law. CAT does

not define these terms, and the State Department suggested that the requirements of Article 16 concerning "degrading" treatment or punishment potentially include treatment "that would probably not be prohibited by the U.S. Constitution." Unlike in the case of torture, however, CAT does not expressly require States to criminalize acts of cruel, inhuman, or degrading treatment or punishment that occurs within or outside their territorial jurisdiction.

10.3. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

Adopted by General Assembly Resolution A/RES/39/46 of 10 December 1984

Entry into force: 26 June 1987 in accordance with Article 27

The States Parties to this Convention.

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Recognizing that those rights derive from the inherent dignity of the human person.

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms.

Having regard to Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Having regard to the Declaration on the Protection of All Persons from being subjected to torture and other cruel inhuman or degrading treatment or punishment, adopted by the General Assembly on 9 December 1975.

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world.

Part I Standards

Article 1: Definition

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, in intentionally inflicted on a person for such purposes 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 a 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 an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2: Legislation against Torture

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

3. An order from superior officer or a public authority may not be invoked as a justification of torture.

Article 3: Prohibiting deportation, refoulement or extradition

1. No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4: Torture a punishable offence

1. Each State Party shall ensure that all acts of torture are offence under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitute complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5: Jurisdiction, Universal Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4 in the following cases:

a. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

b. When the alleged offender is a national of that State;

c. When the victim was a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measure 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 to the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6: Custody, Enquiry, Notifications

1. Upon being satisfied, after an examination of information available of it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in Article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is stateless person, to the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in Article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

Article 7: Prosecution

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall in the cases contemplated in Article 5, if it does not extradite him, submit the cases to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in Article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be les stringent than those which applying the cases referred to in Article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in Article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8: Extradition

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

2. If a States Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 5, paragraph 1.

Article 9: Co-operation among states

1. States Parties shall afford one another the greatest measure of assistance in connection with civil 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.

2. States Parties shall carry out their obligation under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10: Education etc.

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11: Preventive Measures

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12: Prompt Investigation

Each States Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13: Right to remedy

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14: Redress and Reparation

1. Each State Party shall ensure in it 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 full 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.

2. Nothing in this article shall affect any right to the victim or other person to compensation which may exist under national law.

Article 15: Evidence extracted under torture

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused as evidence that the statement was made.

Article 16: Interpretation

1. Each Stat Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or reference to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Part II: Super Vision

Article 17: CAT-Committee

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provide. The committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by State Parties. Each State Party may nominate one person from among its own nationals. State Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who

obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the term of five of the members elected at the first election shall express expire at the end of two years; immediately after the first election the names of these live members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.

6. If a member of the Committee dies or resigns or for any other case can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its national to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the State Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18: Procedure

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that

a. Six members shall constitute a quorum;

b. Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meetings, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the State Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19: Reporting by State Parties

1. The State Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.

2. The Secretary-General shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such comments made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with Article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.

Article 20: Inquiry CAT-Committee

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In the agreement with that State Party, such in inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall treatment these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraph 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account to the results of the proceedings in its annual report made in accordance with Article 24.

Article 21: State Complaints

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration Communication received under this article shall be dealt with in accordance with the following procedure:

a. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, references to domestic procedure and remedies taken, pending, or available in the matter.

b. If the matter is not adjust to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee by notice given to the Committee to the other State.

c. The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

d. The Committee shall hold closed meetings when examining communications under this article.

e. Subject to the provisions of sub-paragraph c., the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. for this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.

f. In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in sub-paragraph b., to supply any relevant information.

g. The State Parties concerned, referred to in sub-paragraph b., shall have the right to be represented when the matter is being considering by the Committed and to make submissions orally and/or in writing.

h. The Committee shall, within 12 months after the date of receipt of notice under sub-paragraph b., submit a report.

i. If a solution within the terms of sub-paragraph e. is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.

ii. If a solution within the terms of sub-paragraph e. is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declaration shall be deposited by the States Parties with the Secretary General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the

subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22: Individual Complaints

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No Communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communication submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communication from an individual under this article unless it has ascertained that:

a. The same matter has not been, and is not being examined under another procedure of international investigation or settlement;

b. The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communication under this article.

7. The Committee shall forward it is views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five State Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the Stated Parties with the Secretary-General of the United Nations, who shall transmit parties thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual's shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 23: Facilities

The members of the Committee, and of the ***ad hoc*** conciliation commissions which may be appointed under Article 21, paragraph 1.e, shall be entitled to the facilities, privileges and immunities of experts on missions for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24: Reporting by CAT-Committee

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

Part III: Final Provisions

Article 25: Signature etc.

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26: Accession

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27: Entry into Force

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Government shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28: Non-recognition competence on basis of Article 20.

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in Article 20.

2. Any State Party having made a reservation in accordance with paragraph 1of this article may, it any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29: Amendments

1. Any State Party to this Convention may propose an amendment and file in with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favor a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favors such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the State Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional process.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30: Disputes

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31: Renunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commerce consideration of any new matter regarding that State.

Article 32: Depository

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this convention or acceded to it, of the following particulars:

a. Signature, ratifications and accessions under Articles 25 and 26;

b. The date of entry into force of this Convention under Article 27, and the date of the entry into force of any amendments under Article 29;

c. Denunciations under Article 31.

Article 33: Language

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

10.4. Some important provisions regarding protection of labors rights:

The labors rights are protected under many conventions of the United Nations. The important convention and their provisions are as follows:

10.4.1. Freedom of Association and Protection of the Right to Organize Convention (No. 87):

San Francisco, 9 July 1948

Entry into force: 4 July 1950

The General Conference of the International Labor organization.

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organize, this is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organization declares recognition of the principle of freedom of association to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that freedom of expression and of association are essential to sustained progress;

Considering that the International Labour Conference, t its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that they General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour

Organization to continue every effort in order that it may be possible to adopt one or several international Conventions;

Adopts the ninth of July of the year one thousand nine hundred and forty-eight, the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organize Convention, 1948;

Part 1. Freedom of Association:-

Article 1: State obligations

Each Member of the International Labour Organization for which this Convention is in force undertakes to give effect to the following provisions.

This Article 1 gives responsibility to every member of ILO to enforce the provisions of this convention within their territory. Some important rights provided under the convention are:

1. Right to join organizations (Article 2)
2. Right to constitution and rules (Article 3)
3. Right not to be dissolved or suspended by administrative authority (Article 4)

10.4.2. Right to Organize and Collective Bargaining Convention (No. 98):

Geneva, 1 July1949

Entry into force: 18 July 1951

The General Conference of the International Labour Organization.

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organize and to bargain collective, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts the first day of July of the year one thousand nine hundred and forty-nine, the following Convention, which may be cited as the Right to Organize and Collective Bargaining convention, 1949;

Article 1: Prohibition of Anti – Union Discrimination

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to:

a. make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

b. cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2: Prohibition of Interference with Unions

1. workers' and employers; organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of worker's organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3: Right to Organize

Machinery appropriate to national conditions shall be established where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding Articles.

The main contribution of this convention is that it has promoted collective bargaining in Article 4.

10.4.3. Equal Remuneration Convention (No. 100):

Geneva, 29 June 1951

Entry into force: 23 May 1953

The General Conference of the International Labour Organization.

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951 and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts the twenty-ninth day of June of the year one thousand nine hundred and fifty-one, the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

Article 1: Definition of Equal Remuneration

For the purpose of this Convention:

a. the term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emolument whatsoever payable directly or indirectly, whether in cash or in kind, by the employers to the worker and arising out of the worker's employment;

b. the term *equal remuneration for men and women workers for work of equal value* refers to rates of remuneration established without discrimination based on sex.

Article 2: Promotion of equal remuneration

1. each Member shall, by means appropriate to the methods in operations for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women for work of equal value.

2. This principle may be applied by means of:

a. national laws or regulations;

b. legally established or recognized machinery for wage determination;

c. collective agreements between employers and workers; or

d. a combination of these various means.

Article 3: Promotion of objective appraisal of jobs

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

10.4.4. Abolition of Forced Labour Convention (No. 105):

Geneva, 25 June 1957

Entry into force: 17 January 1959

The General Conference of the International Labor Organization.

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fortieth Session on 5 June 1957, and

Having considered the question of forced labour, which is the fourth item on the agenda of the session, and

Having noted the provisions of the Forced Labour Convention, 1930, and,

Having noted that the Slavery Convention, 1926, provides that all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery and that the Supplementary Convention in the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956, provides for the complete abolition of debt bondage and serfdom, and

Having noted that the Protection of Wages Convention, 1949, provides that wages shall be paid regularly and prohibits methods of payment which deprive the worker of a genuine possibility of terminating his employment, and,

Having decided upon the adoption of further proposals with regard to the abolition of certain forms of forced or compulsory labour constituting a violations f the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights, and

Having determined that these proposals shall take the form of a international Convention.

Adopts the twenty-fifth day of June of the year one thousand nine hundred and fifty-seven, the following Convention, which may be cited as the Abolition of Forced Labour Convention, 1957:

Article 1: Prohibition of Forced Labour

Each Member of the International Labour Organization which 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 mobilizing and using labour for purposes of economic development;

c. as a means of labour discipline;

d. as a punishment for having participated in strikes;

e. as a means of racial, national or religious discrimination.

10.4.5. Discrimination (Employment and Occupation Convention (No. 111)

Geneva, 25 June 1958

Entry into force: 15 June 1960

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session o 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination decided upon the adoption of certain proposal with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in condition of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

Adopts the twenty-fifth day of June of the year one thousand nine hundred and fifty-eight, the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1: Definition of Discrimination

1. For the purpose of this Convention the term discrimination includes :

a. any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

b. such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

10.4.6. Minimum Age Convention (No. 138)

Geneva, 26 June 1973

Entry into force: 19 June 1976

Article 1: Abolition of Child Labour and Raising Minimum age:

Each member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

Article 2: Specification of Age; normally at least 15 years

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment of work in any occupation.

2. Each Member which has ratified this Convention may subsequently notify the Director-General of the International Labour Office, by further declarations, that it specifies a minimum age higher than that previously specified.

3. The minimum age specified in pursuance of paragraph 1 of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Notwithstanding the provisions of paragraph33 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after

consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organization a statement –

a. that its reason for doing so subsists; or

b. that it renounces its right to avail itself of the provisions in question as from a stated date.

Article 3: For dangerous work minimum age is 18 years

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young person's shall not be less than 18 years.

2. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist.

3. Notwithstanding the provisions of paragraph 1 of this Article national laws or regulations or the competent authority may, after consultation with the organization of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young person's concerned are fully protected and that the young persons have received adequate specific instruction or vocation training n the relevant branch of activity.

10.4.7. Indigenous and Tribal Peoples Convention (No. 169)

Geneva, 27 June 1989

Entry into force: 5 September 1991

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Nothing the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International

Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilation orientation of the earlier standards, and

Recognizing the aspiration of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identifies, language and religions, within the framework of the States in which they live, and

Nothing that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social ecological harmony of humankind and to international co-operation and understanding, and

Nothing that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organizations of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and.

10.4.8. Declaration on Fundamental Principles and Rights at Work

Adopted by the International Labour Conference at the 86th Session, Geneva, 18 June 1998

Whereas the ILO was founded n the conviction that social justice is essential to universal and lasting peace;

Whereas economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;

Whereas the ILO should, now more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation;

Whereas, in seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;

Whereas the ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work as the expression of its constitutional principles;

Whereas it is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

The International Labour Conference,

1. Recalls:

a. that in freely joining the ILO, all Members have endorsed the principles and rights set out in its Constitution and in the Declaration of Philadelphia, and have undertaken to work towards attaining the overall objectives of the Organization to the best of their resource4s and fully in line with their specific circumstances;

10.4.9. Worst Forms of Child Labour Convention (No. 182)

Geneva, 17 June 1999

Entry into force: 19 November 2000

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 86th Session on 1 June 1999, and

Considering the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, as the main priority for national and international action, including international cooperation and assistance, to complement the Convention and the Recommendation concerning, to complement the Convention and the Recommendation concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour, and

Considering that the effective elimination of the worst forms of child labour requires immediate and comprehensive action, taking into account the importance of free basic education and the need to remove the children concerned from all such work and to provide for their rehabilitation and social integration while addressing the needs of their families, and

Recalling the resolution concerning the elimination of child labour adopted by the International Labour Conference at its 83rd Session in 996, and

Recognizing that child labour is to a great extent caused by poverty and that he long-term solution lies in sustained economic growth leading to social progress, in particular poverty alleviation and universal education, and

Recalling the Convention on the rights to the Child adopted by the United Nations General Assembly on 20 November 1989, and

Recalling the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session in 1998, and

Recalling that some of the worst forms of child labour are covered by other international instruments, in particular the Forced Labour Convention, 1930, and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, and

Having decided upon the adoption of certain proposals with regard to child labour, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

10.4.10. Maternity Protection Convention (No. 183)

Geneva, 17 June 1999

Entry into force: 19 November 2000

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 88th Session on 30 May 1999, and

Nothing the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and in order to recognize the diversity in economic and social development of Members, as well as they diversity of enterprises, and the development of the protection on maternity in national law and practice, and

Nothing the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981, and

Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000.

Scope

Article 1 : Definition of Woman and child

For the purpose of this Convention, the term ***woman*** applies to any female person without discrimination whatsoever and the term ***child*** applies to any child without discrimination whatsoever.

10.5. Sum Up:

International human rights law is found in the International Bill of Rights, which contains the nonbinding Universal Declaration of Human Rights (though most of its provisions are generally recognized as constituting International Customary Law) and two general human rights treaties, the International Covenant on Civil and Political Rights ICCPR and the International Covenant on Economics, Social and Cultural Rights (ICESCR). It should be emphasized that these instruments protect all human beings regardless of their nationality and legal status. Therefore, migrant workers, as non-nationals, are generally entitled to the same human rights as citizens. While the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), (1990) is the only UN instrument of direct relevance to migrant workers. There are also several other UN instruments that are of potential importance in terms of protecting migrants from discrimination and exploitation on grounds than their non-national status. The International Convention on the Elimination of All forms of Racial Discrimination (ICERD) (1965), currently one of the most widely ratified of the UN human rights conventions, binds States parties to outlaw discrimination on the grounds of race, colour, descent, or national or ethnic origin against all individuals within the jurisdiction of the State and to enact sanctions for activities based upon such discrimination. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) consolidates the provisions of existing UN instruments concerning discrimination on the basis of sex and applies to citizens and non-citizens. Other human rights instruments of relevance to migrant workers include the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984) and the International Convention on the Rights of the Child (CRC) (1989).

It is important to keep in mind a number of basic or fundamental rights, which are frequently violated in respect of migrant workers. These rights are found in the general international human rights instruments and are also protected by most

national constitutions. Clearly, these rights include freedom from slavery, forced labour, degrading or inhuman treatment or punishment. There is little doubt that the working and living conditions of some migrant workers in certain parts of the world are very similar to the situations depicted in these rights' violations. Such treatment is often evident in respect of those migrant workers who have been trafficked or abused; placed in situation of debt bondage where they find themselves unable to escape a certain abusive employment situation until they have paid off their debts to employer, agent or recruiter; and other forms of exploitation. Women migrants, because of the gender-specific jobs or sectors in which they predominate, are particularly vulnerable to such abuses. Slavery and forced or compulsory labour in respect of migrant workers is prohibited by general international human rights law, specific international instruments against slavery and slavery-like practices and ILO standards.

10.6 References:

- Convention against torture and other cruel, inhuman or degrading treatment or punishment.
- Conventions relating to labour rights.
- International Human Right, ERMCDRA, NOWAK and TRETTER, Sweet & Maxwell.

10.7 Check your progress

A. Fill in the blanks

1. The liability of the State to prevent torture in its jurisdiction is given under article……………………

2. The freedom of Association and Protection of the Rights to organize Convention (No. 87) came into force on………………….

3. The deliberate infliction of severe pain or suffering, whether to punish or intimidate, or to obtain information is known as…………

4. CAT Article 14 provides that signatory States must ensure that their legal systems provide victims of torture (or their dependents, in cases where the victim has died as a result of torture) with the ability to obtain civil redress in the form of……………………..

5. The indigenous and Tribal Peoples convention (No. 169) was adopted on……………………..

B. True or False

1. Torture under CAT is not totally prohibited.
2. The minimum age for employment is 16 years.
3. The convention (No. 111) defines "Discrimination" in Article 1.
4. The language in which the CAT convention is to be published are 6 in number.
5. Torture is a punishable offence

10.8 Answer Check your progress

A. Fill in the blanks

1. Article 2 of CAT
2. 4th July 1950
3. Torture
4. "Fair and adequate compensation"
5. 5th Sept. 1991

B. True or False

1. False
2. False
3. True
4. True
5. True

10.9 Terminal Questions

Q1. Define Torture? Discuss some important provisions of CAT relating to protection from torture.

Q2. Give the definition of "Discrimination" and explain it in reference to the protection of human rights of labors.

Q3. Explain the importance of Indigenous & Tribal Peoples convention (No. 169) & of Worst Forms of Child Labour Convention (No. 182) in reference to the Declaration of Fundamental Principles and Rights at Work.