

HUMAN RIGHTS AND DUTIES

COLLECTED, COMPILED AND EDITED

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Course Contents

Unit – i

Definition of Human Rights- Nature, Content, Legitimacy and Priority – Theories on Human Rights – Historical Development of Human Rights.

Unit – II

International Human Rights – prescription and Enforcement upto World War II – Human Rights and the U.N.O – Universal Declaration of Human Rights - International Covenant on Civil and Political Rights - International Covenant on Economic, Social and Cultural Rights and Optional Protocol

Unit – III

Human Rights Declarations – U.N. Human Rights Declarations – U.N. Human Rights Commissioner

Unit – IV

Amniesty International – Human Rights and Helsinik Process – Regional Developments – European Human Rights System – African Human Rights System - International Human Rights in Domestic Courts.

Unit – V

Contemporary Issues on Human Rights: Children’s Rights - Women’s Rights – Dalit’s Rights – Bonded Labour and Wages – Refugees – Capital Punishments. Fundamental Rights in the Indian Constitutions – Directive Principles of State Policy – Fundamental Duties – National Human Rights Commission.

HUMAN RIGHT AND DUTIES**PAPER – 24,****Contents**

Units	Page No
<u>UNIT – 1</u> 1.1 Definition of Human Rights 1.2 Nature, Content, Legitimacy and Priority 1.3 Theories on Human Rights 1.4 Historical Development of Human Rights	1 - 22
<u>UNIT – 2</u> 2.1 International Human Rights and UNO- Prescription and Enforcement upto World War II 2.2 Universal Declaration of Human Rights - 1948 2.3 International Covenant on Civil and Political Rights 2.4 International Convention on Economic, Social and Cultural Rights and Optional Protocol	23 - 43
<u>Unit – 3</u> 3.1 Human Rights Declarations 3.2 U.N. Human Rights Declarations 3.3 U.N. Human Rights Commissioner	44 – 55
<u>Unit – 4</u> 4.1 Amnesty International Human Rights and Helsinki	56 - 73

<p>Process</p> <p>4.2 Regional Developments</p> <p>4.3 European Human Rights System</p> <p>4.4 African Human Rights System</p> <p>4.5 International Human Rights in Domestic Courts.</p>	
<p><u>Unit – 5</u></p> <p>5.1 Contemporary Issues on Human Rights:</p> <p>5.2 Children’s Rights</p> <p>5.3 Women’s Rights</p> <p>5.4 Dalit’s Rights, Bonded Labour and Wages</p> <p>5.5 Refugees</p> <p>5.6 Capital Punishments</p> <p>5.7 Fundamental Rights in the Indian Constitutions</p> <p>5.8 Directive Principles of State Policy –</p> <p>5.9 Fundamental Duties</p> <p>5.10 National Human Rights Commission.</p>	74 - 117

UNIT – 1

1.1 Definition of Human Rights

1.2 Nature, Content, Legitimacy and Priority

1.3 Theories on Human Rights

1.4 Historical Development of Human Rights

1.1 – DEFINITION AND MEANING OF HUMAN RIGHTS

Human rights can be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. "Human rights are sometimes called fundamental rights or basic right or natural rights. As fundamental or basic rights they are those which must not be taken away by any legislature or any act of 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. Another way to describe them would be to call them common rights', for they are rights which all men or women in the world country. Human rights are nor created by any legislation, they assume the position of nature! Rights. Any civilized country to body like the U.N must recognize them. They cannot be subjected to the process of amendment even. The legal duty to protect human rights included the legal duty to respect them. Members of the U.N have committed themselves to promote respect for and observance of human right and fundamental freedom. International concern with human rights as enshrined in the United Nations Charter is not a modern innovation.

Human rights are, therefore, those rights which belong to an individuals a consequence of being human. They are based on elementary human needs as imperatives. Some of these human needs are elemental for sheer physical survival and health. Others are elemental for physis survival and health. Thus, human rights can be

perceived and enumerated. These rights are associated with the traditional concept of natural law.

Rights being immunities denote that there is a guarantee that certain things cannot or ought not be done to a person against his will. According to this concept, human beings, by virtue of their humanity, ought to be protected against unjust and degrading treatment. In other words, human rights are exemptions from the operation of arbitrary power. An individual can seek human rights only in an organized community, i.e., a state, or in them in a state or anarchy where there is hardly any just power to which a citizen can appeal against the isolations of rights. Thus, the principle of the protection of human rights is derived from the concept of man as a person and his relationship with an organized society which cannot be separated from universal human nature.

Human rights being essential for all-round development of the personality of the individual in the society be necessary protected and be made available to all the individual. They must be preserved, cherished and defended if peace and prosperity are to be achieved. Human rights are the very essence of a meaningful life, and to maintain human dignity is the because of inevitable increase in the control over men's action by the governments which by no means can be regarded as describe. There are several States where fundamental standards of human behavior are not observed. The consciousness on the part of the human beings as to their rights has also necessitated the protection by the States. It has been realized that the functions of all the laws whether they are the rules of municipal law or that of function allow should be to protect them in the interest of the humanity.

One of the achievements of the contemporary international law is to recognize human dignity and honour. The individual has come of age in International Law. It has been also realized that the international protection of the individual against the state should no longer be entrusted to the State as his guardian in Litem. This is clearly reflected from a number of conventions of varying scope which have been adopted under the auspices of the United Nations organization in the last six decades or so. A number of declarations adopted by the United Nations and its specialized agencies

also got to prove that their members have pledged themselves to achieve the promotion of universal respect for and observance of human rights and fundamental freedoms. State themselves are conscious of the rights of the human beings. They in order to protect the rights, have made regional arrangements by making conventions. On national level too, they have taken measures to protect the rights of the individuals by incorporating the provisions relating to it in their Constitutions. Non-governmental organizations on national, regional and international level are also devoted in bringing the cases of violations of human rights in lime light and finding out ways and mean to prevent their occurrence.

Presently, there is a wide spread acceptance of the importance of human rights in the international structure because it has legal, more and political bearing. Human rights are legal because it involves the implementation of rights and obligation sectioned in international relatives. It is moral because human rights are a value-based system to preserve human dignity and it is political in the larger sense of the word. They also operate to limit the power of Governments over individuals. However, one will not hesitate to admit that there is a confusion prevailing as to its precise nature and scope and the mode of International Law as to the protection of these rights.

Definition Of Human Rights

Human rights have been defined differently, some writers even question the expression. Human rights, because, to them, it is a exits version since human is marked by the presence of man, so a person. Thus, Baxi prefers the word huper, in place of “human”. Therefore, human rights become “huper rights”. Some definitions are given below.

According to Boutros BoutrosGhali, the former Secretary General of the UN, human rights constitute a common language of humanity.

Milne argues that human rights are simply what every human being ovens to every other human being and as such represent universal moral obligations. These rights can be summarized as the right to life, to freedom from unproved violence and arbitrary coercion, to be dealt with honestly, to receive aid in distress, and to be respected as a human person.

Susan Moller okin states that a human rights is a claim to something (whether a freedom, a good, or a benefit) of crucial importance of human life.”.

As per Basu, human rights are those minimum rights is to be found in the protection of Human Rights Act, 1993 enacted by our Parliament, Under section 2(1) (d), human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

This Act was amended in 2006 and this definition has been further extended. Now, beside the two covenant –Economic, Social and cultural Rights and Civil and Political Rights adopted by the UN General Assembly on 16 December 1966, “Such other covenants or conventions adopted by the General Assembly of the UN as the Central the Definition of human rights. Thus, for example, CEDAW adopted by the UN in 1979 and ratified by India stands included in the definition given in Section 2(l) (d) of the Protection of Human Rights Act. In his Tagore Law Lecture, Krishna Iyer a former outstanding judge of the Supreme Court of India, has defined human rights as under:

A.K. Ganguli J of the Supreme Court in Ram Deo Chauhan v. Bani Kant Das⁷ has rightly observed:

“Human right is a broad concept and cannot be straitjacketed within narrow confines. Any attempt to do so would truncate its all-embracing scope and reach, and denude it of its vigour and vitality.”

“Human right”, thus, “reflect what a person needs in order to live a meaningful and dignified existence”,

Human rights, as such, are those rights which an individual, being an individual, is entitled to and which in a civilized society are recognized and enforced. The core element of such rights is universal and consists of freedom, equality and liberty. In international law, this core content is evidence in the Charter of UN. The “peoples of the UN” have reaffirmed faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

Louis Henkin, in his 'The Age of Rights' defines: "Human rights are rights of individuals in society. Every human being has legitimate, valid, justified claims upon his or her society... to various "goods' and benefits ... they are defines, particular claims listed in international instruments..... deemed essential for individual well-being, dignity, and fulfillment, and that reflect a common sense of justice, fairness, and decency."

Jack Donnelly's definition is limited mainly to 'functional aspects. He defines what rights are humans as follows: "Right are titles that ground claims of special force. To have a right to X is to be specially entitled to have and enjoy. The right thus governs the relationship between right-holder and duly-bearer insofar as that relationship rests on the right. In addition, to have a right is to be empowered to press rights claim, which ordinarily "trump'... other grounds for action... the duties correlative to rights 'belong to' the right-holder, who is largely free to dispose of those duties as he sees fit. Thus individual rights are political trumps held by individuals....."

"Human rights' are those individual right entered the language of political discourse only three centuries ago. This does not mean, of course, that what we call human rights did not exists before than or that they were never respected. They were often respected in practice for a wide variety of religious, cultural, and social reasons only vaguely related to the reasons we usually cite for observing rights today. Throughout antiquity and the Middle Ages the language of politics was caste in the terms of obligation (duty) rather than rights."

Section 2 (1) (d) of the Protection of Human Rights Act, 1993 defines 'human rights': Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India.

The definition given in the Section 2 (1) (d) is not exhaustive. It should be read with the rights enunciated in various international covenants, such as the Universal declaration of Human Rights 1948, the Geneva Red cross Conventions 1949, Helsinki Declaration 1975, the international Covenants on Civil and Political Rights, 1966, etc.

Manorama Year Book: “A right may be defined as something to which an individual has a just claim Human rights are those that individuals have by virtue of their existence as human beings. the right to life itself and the basic necessities of food and clothing may be considered fundamental human rights .Human rights traditionally have been put in two categories , natural rights and civil rights, Natural rights are those rights traditionally have been put I two categories, natural rights and civil rights. Natural rights are those that belong to individuals by virtue of their humanity: the right to remain alive, to sustain life with food and shelter, and to follow the dictates, and to follow the dictates of their conscience.”

1.2 - NATURE OF HUMAN RIGHTS –

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 being independent of, and even prior to his participation in the society. Consequently, they are the result of recognition by the State, but they⁶ 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. To conclude, it may be said, that a positive legal system which does not recognize human rights is not law.

The idea that the individual has right; claims upon society, or against society: that these rights which society must recognize, on which it is obliged to act, are intrinsic to human rights.

The human rights are inalienable. “Human person possesses rights because of the very fact that it is a person, a whole, a master of itself and of its acts.... By natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to a man because of the very fact that he is a man.”

Human rights are the rights that a human being has in virtue of whatever characteristics he has that are both specifically and universally human. If the only relevant condition for enjoying certain rights is being human, and if this property does

not admit of degrees, there cannot be differences of degree in the extent to which the rights in question are held this is , all human beings have them to the same degree.

1.3 - THEORIES OF HUMAN RIGHTS

Views of the jurists on the question as to basis of human rights are divergent which have led to the emergence of different theories. Prominent amongst them are as follows:-

(1) **Natural Law Theory:** - Ancient thinkers and philosophers were of the view that human rights have been derived from the principle of eternal law as revealed in natural law which is also something called Divine law or Law of reason, unwritten law, Universal or Common law, eternal law or moral law². The source of natural law is either God or reason. The Greeks regarded natural law as being closely related both to justice and ethics. It was therefore conceived by the Greeks as a body of imperative rules imposed upon mankind by nature, the personifies universe. Natural law notion was reflected in the writings of Aristotle, Cicero, Gaius and other philosophers. Aristotle, the Greek philosopher stated that it is natural justice that binds us all even those who have no association or covenant with each other. Stoics popularized the maxim 'live according to nature'. Cicero was of the view that true law is reason in agreement with nature, which is universally applicable, ever sting, and unchanging. According to him natural law is universal in nature and therefore its application is not limited to any class or category of persons. Later, Christian Fathers extended the authority of natural law by asserting to it a divine origin. They have cited St. Paulas approving their doctrine.

Aquinas, the Christian theologian, advocated that natural law is derived from God. According to him eternal law governs the world through the will of God and according to his wisdom. Thomasius also stated that natural law is a divine law, written in the hearts of all men.

Natural law theory was practiced by Romans in the formation of body of legal ruled for the administration of justice. The Roman view was that natural law is the immutable and universal part of civil law. Roman classifiable writers used the Stoic theory as an ornament for their texts. Thus, the origins of the concept of human rights are usually

agreed to be found in the Greco-Roman natural law doctoriness of Stoicism. The theory of natural law has therefore a religious base.

The theory of natural rights clearly derives from natural law. Natural right is an interest recognized and protected by a rule of natural justice. It was a body of principles superior to positive law. They arose from the very nature of man. The concept of natural rights found place in many documents of human rights such as the Bill of Rights (England) of 1689, declaration of Rights (Virinia) of 1779 and the Declaration of Rights stated that, 'all men are by nature equally free and independent and have certain inherent natural rights of which when they enter a society, they can not by any compact derive or divest their posterity.

Natural Law as the basis of human right has been criticized on a number of grounds. Firstly, all rights are legal rights and are the creations of law and since natural rights are the creations of natural law; they are a metaphor. Secondly, natural law theory regards that what is naturalism innate, universal or immutable. But there have been conflicting interpretations as to what is natural? Thus, the meaning of the law of nature itself is not precisely clear. Different jurists have given different meaning to it such as reason, religious or moral and therefore it is such a hazy concept that, if sought to be enforced, it can result in confusion. However, it has to be admitted that the law of nature has greatly influenced the growth of human rights law. There cannot be any doubt if it is said that human rights law has developed in the initial stage on the basis that its rules derive from the law of nature.

However, it may be noted that the concept of nature law, and so also that natural rights theory underwent changes in different periods in accordance with times and circumstances.

(2) **Positivism or the theory of the Authority of State** – A different approach in respect of the rights was adopted by the positivists. The positivism was in vogue in 18th and 19th centuries. Positivity's believed that people would be bound to obey law if it was created by appropriate legislative authority or sovereign irrespective of its being reasonable or unreasonable. The positivity's called this law, law positivism i.e. law which is in fact ad contrasted with law which ought to be. BynkerShoek was one of the chief exponents of the positivists school According to the Positivists, the source of

human rights lies in the enactment of a system of with sanctions attached to it. They emphasize the distinction between 'is' and 'ought' and criticize natural law theorists for undue emphasis on 'ought' and for blurring the distinction between the two. The modern exponent of Positivism is Prof. H.L.A. Hart. According to him, there is a distinction between invalidity of law and the morality of law. This is the basic difference between natural rights theory and Positivist theory. According to the Positivists, a law to be valid must be enacted by an appropriate legislative authority. Such a law remains valid, irrespective of its morality.

(3) **Marxist theory** – The Marxists do not conceive the rights of individuals as distinct from the right of the society as a whole. According to them, only by achieving the upliftment of the society or community, the, higher freedoms of individuals can be achieved. Thus in view of this theory even satisfaction of basic needs of individuals are contingent on realization of social goals. In their view, notion of individual rights is a bourgeois illusion. They regard concepts of law, morality, democracy, freedom etc. as historical categories whose content is determined by the conditions of life of society or community. The content of notions and ideas change in accordance with the changes that take place in the lives of people living in a society.

(4) **Theories based on Justice** – John Rawls is the chief exponent of this theory. According to him, "Justice is the first virtue of social institution." In his view, the role of justice is crucial to the understanding of human rights. Indeed human rights are an end of justice. The principles of justice provided a way of assigning rights and duties in the basic institutions of society and also define the appropriate distribution of the benefits and burdens of social co-operation. The general conception of justice behind the principles of justice is one of fairness. The concepts of fairness and justice help out in theories based on justice. The concepts of fairness and justice help to determine all social primary goals, such as, liberty and opportunity, income and wealth and the needs of self-respect which are to be distributed equally unless an exception is made for the benefit of least forward.

(5) **Theories based on dignity** – The exponents of this theory regard the protection of human dignity as a paramount objective of social policy. Following a value-

policy oriented approach based on the protection of human dignity, they point out that the demands for human rights are demands, for wide sharing in all the values upon which human rights depend for effective participation in all community value process. According to them there are eight interdependent values upon which human rights depend. They are: (i) respect; (ii) power; (iii) enlightenment; (iv) wellbeing; (v) health; (vi) skill; (vii) affection; (viii) rectitude. The ultimate goal of the exponent of theories bases on dignity is to ensure a world community in which there is democratic distribution of value, all available resources to be utilized to the maximum and where paramount objective of social policy is the protection of human dignity.

(6) Theory based on equality of respect and concern – Last but not the least theory regarding human rights is the theory based on equality of respect and concern. This theory was propounded by Dworkin. The basis premises of this theory is that government must treat all their citizens with equal concern and respect. Dworkin has affirmed the utilitarian principle that ‘everybody can count for one. Nobody for more than one. He even advances the idea of State intervention in order to achieve social welfare. In his view, a right to liberty is too vague to be meaningful but there are certain specific liberties such as, freedom of speech, freedom of worship rights of association and personal and sexual relation require special protection against government interference. If these liberties were left to a utilitarian calculation or an unrestricted calculation of general interest, the balance would tilt in favour of restriction instead of general interest.

A perusal of above theories shows that no single theory can satisfactory explain present state and development of human rights. However, the natural rights theory based on natural seems to be more akin to the present concept and development of human rights. However, the natural rights theory bases on natural seems to be more akin to the present concept and development of human rights. Theory of natural rights along the theories based on justice, Theory base on dignity and theory based on an equality of respect for and protection of human rights. It may be noted here that twentieth century has witnessed the decline of positivism and the revival of nature law. Once again the faith in natural law was reaffirmed. The above mentioned theories based on justice and theory based on dignity are based on natural law theory. It deserves to be notes that the conception of natural law underwent significant changes

during this period. Basing their views on Kant and Hegel, the modern writers adapted natural law in accordance with times and circumstances. The chief exponent of this movement were Stammler and Kohler, Stammler, for example, conceded that natural law could be adapted to the changing times and circumstances although its fundamental or basic principles remained unalterable. He, therefore, provided the theory of "inner morality of law." That is to say, there is an inner morality of law and there is a definite purpose behind law. Law is not a body of meaningless set of rules and exists for its own sake. Law exists or is created to achieve some purpose. The least that can be said in the end is that the idealist character or international law has greatly influenced public international law in general, and development of human rights in particular.

Is Human Rights A Legal Rights –

A question arises as to whether human rights are legal rights? It may be noted that legal right is a right which is recognized and protected by the legal system. Legal rights have two important essential elements i.e., firstly the holder of the right, and secondly, the person bound by the duty. Only legal persons can be bound by duties or be the holder of the legal rights legal persons can be bounded by duties or be the holder of the legal rights.

Every right therefore involves a relationship between two or more legal persons. Right and duties are correlative, that is, a person cannot have a right without a corresponding duty. Human rights belong to human being and the State has the corresponding duty to protect the rights of human beings. Declaration of the Human Rights Defenders¹ adopted by the General Assembly on December 9, 1998 laid down under Article 2 para 1 that each State has the prime responsibility and duty to protect, promote and implement all human rights by adopting necessary measures. Para 2 of the above Article states that each State shall adopt necessary legislative, administrative and other steps to ensure that the right to protect human rights is effectively guaranteed. Further, International Covenant on Economic, Social and Cultural Rights adopted in 1966 stipulated in the Preamble as to the obligation of States to promote universal respect for and observance of human rights and freedoms. The above implies that human right is a

legal right. While human beings have rights the State has a corresponding duty to protect the rights.

Kinds Of Human Rights

Human rights are indivisible and interdependent, and therefore precisely there cannot be different kinds of human rights. All human rights are equal in importance and are inherent in all human beings. The Universal Declaration of Human Rights therefore did not categorize the different kinds of human rights. It simply enumerated them in different articles. However the subsequent developments made in the human rights field under the United Nations system make it clear that human rights are of two kinds; (1) Civil and Political Rights, and (2) Economic, social and Cultural Rights.

Civil rights or liberties are referred to those rights which are related to the protection of the right to life and personal liberty. They are essential for a person so that he may live a dignified life. Such rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhuman and degrading treatment, freedom of thought, conscience and religion and freedom of movement.

Political rights may be referred to those rights which allow a person to participate in the Government of a State. Thus, right to vote, right to be elected at genuine periodic elections, right to take part in the conduct of public affairs, directly or through chosen representatives are instances of political rights.

The nature of civil and political rights may be different but they are inter-related and interwoven and therefore, it does not appear logical to differentiate them. This reason alone led to the formulation of one Covenant covering both-civil and political rights into one Covenant, i.e., International Covenant on Civil and Political Rights.

These rights are the rights of the first generation which derive primarily from the seventeenth and eighteenth century reformist theories which are associated with the English, American and French revolutions. ¹ Civil and political rights (also sometimes called 'freedom from') are the rights which may be termed as negative rights in the sense that a government is required to abstain from doing those activities that would

violate them. Specifically, these rights protect citizens from acts of murder, torture, cruel and unusual punishment, ex post facto legislation, the denial of habeas corpus and imprisonment without due legal process. Notable point in these rights is that they are capable of immediate and full realization without significant costs being incurred.

1.4 - DEVELOPMENT OF HUMAN RIGHTS

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

The origin and development of Human Rights has been on two bases, the first is the National and the second is the International. On the National base, the conception of Human Rights got the breed to originate and develop in the form of religion in different countries and in different times. The conception may be felt to originate in the ideas of mercy, kindness and pity on human beings in various scriptures. 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 dealing and behavior with all creatures of the world what to say of only human beings:

दृते दृह मा मित्रस्य मा चक्षुषा सर्वाणि भूतानि समीक्षन्ताम्।
मित्रस्याहं चक्षुषा सर्वाणि भूतानि समीक्षे मित्रस्य चक्षुषा समीक्षामहे॥ (यजु० ३६-१८)
Drite drintha maa mitrasya maa chakshusha servaani bhootaani sameekshantauani.
Mitrasyaham chakshusha sarvaani bhootani sameekshe mitrasya chakshushaa
Sameekshaa 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. 'VasudhaivaKutumbakam' the words

the whole world is certainly one family, has been preached and pressed in vedic literature. And on the National Level, India in the first to have

(वसुधैवकुटुम्बकम्)

originated and respected the conception of International Law. In the Babylonian Laws, the seeds of International Law may be traced in the reign of LaigasUruka of Laigas (3260 B.C.) Sergon of Akkar (2300 B.C.) and Hammurab of Babylon (1792-1750 B.C.). Similarly, in the Assyrian Laws in the reigns of TighalatPil;ashar 1st (1115-1077 B.C.) and in the Hittites Laws, in the reign of King Telpenus. Similarly, these laws may be found in the Jurisprudence of Laoj and Confucius (550-478 B.C.). In the City States of Greece, the right of equal freedom of speech-isogorie, equality before Law-isonorum, the right to trade-jus commercii, the right of access to justice – jus actionis may be found to have been prevalent. The roots of protection of human rights may be found in the civil law-jus civil and the law of nations-jus gentium of Romans.

In the Greek and Roman Laws, the principles of International Law appear to be attached with the principles of natural justice. The stoic philosophers found all creatures being pervaded by a Universal Power, which principle was already established in the period of Mahabharata (5000 B.C.) in India as in BhagwadGeeta a chapter of Mahabharata, Lord Krishna Said :

समं सर्वेषुभूतेषु तिष्ठन्तं परमेश्वरम्।
 विनश्यत्सु अविनश्यन्तं यः पश्यति सः पश्यति॥
Samam sarveshn bhootishu tishthantam Parmeshwaram
Vinashyatsu avinashyantam yah pashyati sah pashyati.

One who sees the Supreme Power equally existing among all creatures, destroying their bodies, but undestroying power, he alone verily sees.

By the end of the middle Ages the liberal political principles were affiliated with the principles of natural justice and a social need of recognition of Human Rights was felt to turn into reality rather than a mere philosophy. Accordingly, since the 13th Century till the place of Westphalia, 1648 and during the Renaissance when feudalism was eliminated, many fine changes began to be brought out.

When restraint against religious intolerance and political as well as economic slavery began, specially the age of long changes as to the use and ownership of property experiments, we may say that the real foundation of Human Rights was laid down. During the very period, due to the failure of rulers to fulfill the mandates of natural law took their steps to take shape of human rights. As evidence to this fact, the

teachings of Thomas Axenag (1224-25-1274) and Hugo Grotius (1583-1169) in the Continent of Europe and Charters, specially Magna Carta, Petition of Rights and Bill of Rights in England may be cited.

CHARTERS OF LIBERTY. – Charters of Liberty are steps towards the realization and implementation of Human Rights. Magna Carta of 1215, Petition of Right of 1628. Habeas Corpus Act of 1679, Bill of Rights of 1689 are some of such steps taken in England.

MAGNA CARTA. – Magna Carta was imposed upon King John by the Earls and Barons, after having been defeated at the hands of the King of France. This declaration of freedom dealt with the right of different contemporary sections of the society; for instance, that the churches would be independent of the control of the King, London and other cities would be free to utilize or practice their freedoms and customs. Unjust taxes would not be imposed upon traders 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 would 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 shall anyone be deprived of justice.

PETITION OF RIGHT. – Petition of Right was allowed by Charles I in 1628. This was a Parliamentary declaration in which freedoms of people were dealt with. For example, that no body shall be indebted nor taxed without the permission of the Parliament, nobody shall be imprisoned in an arbitrary way. No martial law commission shall be used in the times of peace. If somebody has been sent jail, then he will either be released on bail or be acquitted and the judges will not pay any need on the orders of sentence.

HABEAS CORPUS – Habeas Corpus Act was officially titled as an Act for the better securing the Liberty of the subject for Prevention of Imprisonment Beyond the Seas. This Act was enacted by Charles II in 1679. This Act was mainly concerned with the prisoners who were imprisoned for some criminal offence, that the validity of his

sentence be expeditiously heard. By this provision, protection of the freedoms of the people of the country was enforced.

The concept of Human Rights has spread worldwide only after 1945, when the United Nations Organisation was established. Upto the end of the 19th century, even upto half of this century, the Governments throughout the world adopted '**Police State**'. Under this policy, the State used to extract huge taxes, but did not concentrate on development activities. Majority of the States were involved in wars with each other. Majority portion of the revenue was expended for army and armament. There was little scope for the welfare and development activities. Majority of the countries were ruled by the Kings. The King was treated as the "God". Superior powers were assumed in him. He was the sole and supreme in the country. There was no separation of powers. All powers were concentrated in the hands of the King. Monarchic rule was the common form. The number of the countries too was very less.

Under such circumstances there was no scope of welfare and human rights. The people too were adhered to the policy of '**Police State**'. Under this policy, the state had limited liabilities, such as protecting the boundaries of the State from neighbours, to curb the internal disturbances, collection of revenue, etc. At that time, the literacy was very less. People too accepted everything done by the King and his servants.

In middle of the eighteenth century, '**Industrial Revolution**' started in Great Britain. Soon it separated in the western countries and effected entire globe in economic, social, political relations between the States. The industrial Revolution led the imperialism. Great Britain, France, Spain, Portuguese, America etc. western developed Countries began to search new places for their economic development. Several African and Asian Countries, including India, China, South Africa, SriLanka, Burma etc. went into the hand of imperialistic rule. The imperialistic rulers exploited the colonies to the greatest extent.

DadabhaiNaraji, the veteran freedom fighter of India, estimated that Great Britain exploited the Indians to the extent of 30,000,0000 to 40,000,000 pounds per year. This sample example shows us how the Britishers exploited India and Indians. The Britishers

were exploiting the work from Indian labourers without paying or paying only nominal. The Indians were taken away to various colonies, dominions etc. by the Britishers to work in the houses, plantations and factories, etc. Like this our Indians went to Mauritius, Fiji, Trinidad and Tobago etc. The Indian labourers , who were taken to those colonies, have become the citizens of the countries, after such colonies have become independence.

Indian's position under the Great Britain was somewhat better. But the position of Negroes was very worst. They were taken to America and other western countries as '**Slaves**'. They were treated as '**animals**'. The slaves were sold in the '**slaves market** '. The sale transactions of slaves were regulated by '**slave laws**'.

South Africa was under the reign of Great Britain. The White Government adopted Apartheid Policy i.e. suppression of Black. Nelson Mandela., the Black Leader, was imprisoned for 27 years by the white government India and several other countries denounced this policy. As a result of international and national struggles, South Africa was given to the Black in 1990. During the reign of white, the no question of human rights ad their implementation. The human rights were humiliated by the white. They barely exploited the Blacks to maximum extent.

Since the beginning of 20th century, there were tremendous changes occurred in the globe. Science and Technology, information technology, etc. developed abnormally. The number of countries has been increased. The United Nations organization was established on 24-10-1945. Since the establishment of UNO, there has been revolutionary changes in the field of human rights throughout the worlds.

The character of the UNO itself contains several provisions relating to human rights. The character itself starts with the phrase "WE THE PEOPLES OF THE UNITED NATIONS". This phrase itself indicates the determination of the UNO to dedicate itself for the human rights. The preamble affirms that it is "to real firm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". The character aims to eradicate the wars, and to establish international co-operation and peace. It wants to remove untold sorrows of mankind.

Clause(2) of Article 1 of the Charter explains: “the purpose of the United Nations is to develop friendly relations among nations based on respect for the principles of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.:

Article 55 of the Charter narrates its objects about ‘human rights’ as follows: “with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. Higher standards of living, full employment, and conditions of economic and social progress and development.
- b. Solutions of international economic, social, health, and related problems, and international cultural and educational co-operation ; and
- c. Universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 strengthens Article 55 and to achieve the objectives for human welfare and human rights as follows: “All members pledge themselves to take –joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.”

By the strenuous efforts of the UNO, the Universal Declaration of Human Rights 1948 was declared. (Refer topic “Universal Declaration of Human Rights 1948”.)

After this declaration, there was a number of conventions on Human Rights, such as the European Convention on Human Rights 1950, International Covenant on Civil and Political Rights, 1966, the International Covenant on Economic, Social & Cultural Rights 1966, international convention on the Elimination of all forms of Racial Discrimination 1966, American convention on Human Rights and Peoples’ rights 1981, etc.

One of the fundamental issues is Labour, in which case human rights are barely exploited throughout the world. Women and young persons are exploited, as they are cheaply available. There are more than one hundred International Labour conventions

on this issue since 1945. The character of the United Nations Organisation also has concentrated on this issue since its inauguration. It has established International Labour Organization, one of its main organs with the sole object of upgrading the living standards of the labour throughout the world. There were four conventions named Geneva “Red Cross” Conventions of 1949.

Customary International Law: the important point is to be noted that the International Court of justice has recognized customary international Law with the main objectives to adopt and implement the treaties to protect human rights in a universal level.

Stages: the writers on international law recognized three stages in the development of human rights.

First stage: the first stage from the period of Rousseau of eighteenth century. In this period civil and political rights were throughout to be human rights, Rousseau said:”Man is born free, but he is chained everywhere.” The jurists of this period thought and taught that the man would have natural rights given by God, and these rights would arrive from the traditional concept.

Second Stage: the second stage occurs in twentieth Century. Twentieth century. According to the jurists of this period the man has economic, social and cultural rights. Socialism is the basic concept inherent in these rights. Karl Marx, Engel, etc. have influenced the second stage. According to Karl Marx, there are only two classes of people, vizcapitalists and labour, and the capitalists enjoy more privileges such as money, leisure , happiness, rights etc. the labour suffer for all the needs required for living. The capitalist barely exploit the workers. After exceeding certain limit, the workers revolt against the capitalists, and kill them to establish classless society. He preaches that in the classless society, he preaches revolution.

Soviet Russia was the first country to adopt the socialistic principles in the world 1917. It nationalized every means of production, distribution and consumption in the country. According to socialism, all men and women are equal in every aspect. However, the socialism in soviet Russia and in some other socialistic countries has utterly failed. Both the incidents of establishment of socialistic countries and their fall are

historic events in the world history. It is alleged that in the socialistic governments also human rights are exploited.

United Nations Organization was established on 24-10-1945 during the second stage only. The character of UNO mainly concentrated for world peace and human rights. Speak to the truth, from the beginning of the character itself the objectives of the character are crystal clear devoting itself for the upgrading the living standards of every human being in the globe. The evolution of the international law of human rights has been one of the more remarkable features of the development of international law of human rights has been one of the more remarkable features of the development t of international law of human rights has been one of the more remarkable features of the development of international law since 1945, and most particularly after the establishment of UNO.

With the inspiration of the character of UNO, the Universal Declaration of Human Rights 1948 was made it has given birth to several conventions and conferences on civil and political rights, and on Economic social and cultural Rights have been held during this second stage.

Third Stage: the third stage starts since 1970. It is mainly supported by the developing countries. In this stage, a new idea is incorporated in human rights, i.e. in addition to the individual rights of the first two stages, there are collective, group rights, such as the right to self-determination and the right to development, that may properly qualify as human rights.

United Nation Children’s Fund (UNICEF): it was established in 1946 under the supervision of the General Assembly. Now it concentrated for the developmental activities aimed to improve the availability of life for children and mothers in developing countries.

United nations High commissioner for Refugees(UNHCR) : it was established by the General Assembly on 1-1-1951. Its main work is to help the refugees world-wide. It won nobel prizes in 1955 and in 1981 for its work.

High commissioner for human rights: it was established in 1993. At present it has 53 member-states as members. The main object of it is to improve and implement the human rights throughout the world.

Amnesty international: it is a world-wide human rights organization with headquartered in London. It is a non-Governmental Organization. It was established on 28-05-1961. Peter Berenson, a British lawyer appealed in newspapers appealing to show amnesty on the suffering human beings world-wide. Its headquarters are located at Easton street, London WC1X8DJ. Now it has spread throughout the world, having 11,00,000 members in more than 150 countries. There are 6,000 local groups in 70 countries in Africa, the Americas, Asian Europe and the Middle East. Appreciable thing is to know that by the efforts undertaken by this Organization, Nobel Prize for peace was given to it in 1977.

QUESTIONS

UNIT – I

MSW/P-24 (HR)

Long Type - (Within 1000 words)

1. What is Human Rights? Write a brief note on various definitions of Human Rights.
2. Do you agree that Human Rights are legal rights? What is the nature of Human Rights ? Comment.
3. Briefly discuss the various theories of Human Rights.
4. “The Concept of Human Rights is largely influenced by Natural Law Theory” Do you agree? Comment.
5. Write in brief the origin and development of the concept of Human Rights in the World.

Short Type - (Within 300 words)

Write Short Notes on –

1. Meaning of Human Rights
2. Origin of Human Rights
3. Definition of Human Rights
4. Nature of Human Rights
5. Marxists theory on Human Rights
6. Human Rights and Legal Rights
7. Kinds of Human Rights
8. Charters of Liberty
9. Ancient Culture and Human Rights
10. Stages of Human Rights

Unit – 2

2.1 International Human Rights and UNO- Prescription and Enforcement upto World War II

2.2 Universal Declaration of Human Rights - 1948

2.3 International Covenant on Civil and Political Rights

2.4 International Convention on Economic, Social and Cultural Rights and Optional Protocol

2.1 INTERNATIONAL HUMAN RIGHTS AND UNO- PRESCRIPTION AND ENFORCEMENT UPTO WORLD WAR II

The Universal Declaration of Human Rights started the common standard of achievements for the enjoyment and protection of human rights. It was not legally binding on the States. The fact is that it was not intended to be legally binding. The Commission on Human Rights in 1947, while considering the preliminary draft of an International Bill of Human Rights prepared by the Drafting Committee. Decided to draw up a separate Covenant which would be a covenant on such specific rights as would lend themselves to binding legal obligations. The document was to be known as International Covenant on Human Rights. In order to prepare it, a Working group was established which prepared a Draft Covenant consisting of twenty-seven articles divided into three parts. The first part described the obligations of States which adhered to the Covenant: the second part defined some of the rights and freedoms listed in the Draft Declaration, in more precise terms, and the third part described how accession to the Covenant would be effected and how amendments would come into force. The Draft Covenant was forwarded to the Governments for their comments in January, 1948.

The Drafting Committee re-Drafted the Draft Covenant at its Second Session held in 1948. However, it was not examined by the Commission. The Commission in 1949 completed the draft of most of the articles of the proposed covenant on Human Rights.

In the meantime, a proposal was made in the Commission by Australia, the Soviet Union and Yugoslavia for the inclusion in the Covenant of articles on economic, social and

cultural rights. However, the Commission decided to limit the Covenant to certain essential civil freedoms, but agreed the same time to considered in future for the preparation of an additional covenant on measures dealing with economic, social, cultural and other categories of human rights.

In 1950, General Assembly recommended the inclusion of the economic, social and cultural rights in the Covenant. Accordingly, the commission at its 1951 Session proceeded to draft the article on economic, social and cultural rights. When the draft was being considered by the Economic and Social Council, a number of objections were made by many countries as to having both the categories of rights in one Covenant. The argument advanced by them was that the economic, social and cultural rights are different in nature and they are secondary rights.

The economic and social rights were meant for second generation. Later, in 1952, the General Assembly on the recommendation of the Economic and Social Council, decided that the two Covenants shall be drawn up and directed to the Commission on Human Rights to prepare two drafts, one dealing with civil and political rights, the other economic and social rights. However, it was started that each Covenant should contain as many of the provisions as possible to stress the unity of the aim in view.

The Commission completed the preparation of the drafts of the two Covenants by the year 1954 and presented them to the Economic and Social Council. The latter after considering them submitted them to the General Assembly. The Assembly assigned consideration of the question to its Third Committee (Social Humanitarian and Cultural) which work intermittently on the drafts during twelve years.

Numerous amendments or additions to the articles were considered during that period. The text of each Article was thoroughly discussed and vigorously scrutinized. Discussions also concerned the observations of the specialized agencies and of the non-governmental organisations. In addition, the Third Committee also considered the Working papers on specific aspects of the texts.

On the recommendation of the Third Committee, the General Assembly on December 16, 1966 adopted the two Covenants.⁷ International Covenant on Civil and political Rights

(ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). It also adopted an optional protocol to the International Covenant on Civil and Political Rights.⁸ The General Assembly on December 15, 1989 adopted the Second Optional Protocol to the International Covenant in Civil and Political Rights Aiming at the Abolition of the Death Penalty.¹ The General Assembly in 2008 also adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.² With the adoption of the two Covenants and three Optional Protocols, the United Nations completed the task of formulating the international standard of human rights of the individuals. They together along with the Universal Declaration of Human Rights is regarded to have constituted International Bill of Human Rights. Thus, the United Nations fulfilled one of the main objects which it had cherished in 1947.

The two Covenants were open for signature on December 19, 1966. Each required 35 ratifications or accessions before coming into force. The First Optional Protocol, subject to entry into force of the Covenant on Civil and Political Rights, required ten instruments of ratification or accession. Accordingly, the Covenant on Economic, Social and Cultural Rights, and the Covenant of Civil and Political Rights came into force on January 3, 1976 and March 23, 1976 respectively. The Optional Protocol came into force on March 23, 1976. As on May 4, 2014 while the Covenant on Civil and Political Rights had 168 Parties, the Covenant in Economic, social and Cultural Rights had 162 Parties. The Optional Protocol to the Covenant on Civil and Political Rights which came into force on July 11, 1911 had 81 State Parties as on May 4, 2014. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights came into force on May 5, 2013.⁷ As on May 4, 2014 it had 13 State Parties. India acceded to International Covenant on Civil Political Rights, 1966 on well as International Covenant on Economic, Social and Cultural Rights, 1966 on March 27, 1979.

2.2 UNIVERSAL DECLARATION OF HUMAN RIGHTS - 1948 –

Main provisions of the Universal Declaration of Human Rights - The main provisions of the Universal Declaration of Human rights adopted by the General Assembly of the United Nations are as follows –

Right to equality – All human beings are born free and equal in dignity and rights . They are endowed with reason and conscience and should act towards one another in a spirit of brother hood. (Art - 1)

No Discrimination on the ground of race ,colour etc. - Every One is entitled to all the rights and freedoms set forth in thios Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or othert opinion, natural or social origin, property, birth or other status.(Art - 2)

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

Right to life , liberty and security- Everyone has the right to life, liberty and security of person. [Art. 3]

Prohibition of slavery- No one shall be held in slavery or servitude; slavery and slave-trade shall be prohibited in all their forms. [Art. 4]

Prohibition of torture and inhuman treatment- No one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment. [Art. 5]

Right to recognition as a person before law- Everyone has the right to recognition everywhere as a person before the law. [Art. 6]

Equality before law and equal protection of law- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. [Art. 7]

Remedy for violation of fundamental rights- Everyone has the right to as effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. [Art. 8]

Prohibition against arbitrary arrest or detention- No one shall be subjected to arbitrary arrest, detention or exile. [Art. 9]

Right to have fair and public hearing- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. [Art. 10]

Presumption of innocence- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. [Art. 11]

Right to privacy- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. [Art.12]

Right to freedom of movement and residence- Everyone has the right to freedom of movement and residence within the borders of each State.

Everyone has the right to leave any country, including his own, and to return to his country. [Art. 13]

Right to seek asylum- Everyone has the right to seek and to enjoy in other countries asylum from prosecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. [Art. 14]

Right to nationality- Everyone has the right to nationality.

No one arbitrarily deprived of his nationality nor denied the right to change his nationality. [Art. 15]

Right to marry- Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. [Art. 16]

Right to own property- Everyone has the right to own property alone as well as in association with others.

No one shall be arbitrarily deprived of his property. [Art. 17]

Right to freedom of thought- Everyone has the right of freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. [Art. 18]

Right to freedom of opinion and expression- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. [Art. 19]

Right to freedom of peaceful assembly- Everyone has the right to freedom of peaceful assembly and association.

No one may be compelled to belong to an association. [Art. 20]

Right to participate in the government of his country, directly or through freely chosen representatives.

Everyone has the right to equal access to public services in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. [Art. 21]

Right to social security- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. [Art. 22]

Right to work- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without any discrimination, has the right to equal pay for equal work. Everyone, who works, has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of a social protection.

Everyone has the right to form and to join trade unions for the protection of his interests. [Art. 23]

Right to rest and leisure- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. [Art. 24]

Right to a standard of living- Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and

medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widow-hood, old age or other lack of livelihood in circumstances his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. [Art. 25]

Right to education- Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children. [Art. 26]

Right to enjoy culture etc.- Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. [Art. 27]

Right to enjoy human rights- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. [Art. 28]

Right to free development of personality- Everyone has duties to the community in which alone the free and full development of his personality is possible.

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by the 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.

These rights and freedoms may in no case be exercised contrary to the purpose and principles of the United Nations. [Art. 29]

Duty to honour other's rights- Nothing in this Declaration 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. [Art. 30]

2.3 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966.

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

- (a) Preamble
- (b) General (Articles 1 to 3 and 5)
- (c) Rights in Emergency (Article 4)
- (d) Substantive Rights (Articles 6 to 27)
- (e) Implementation or Enforcement Machinery (Articles 28 to 45)
- (f) Final or concluding provisions, regarding ratification of accession of the covenant, amendments, etc.

(a) **Preamble.**-The keystone of the Covenant on Civil and Political Rights, 1966 are the charter provisions concerning the human rights and the Universal Declaration of Human Rights, 1948, which is rightly reckoned as 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 the 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 Charter of the United Nations to promote universal respect for, and observance of , human rights and freedoms,” and “realizing 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.

(b) **General (Article 1 to 3 and 5).**- Articles 1 to 3 and 5 of Part I and Part II of the Covenant are general. Article 1 provides that all peoples have the right of self-determination. By virtue of that right they freely determine their political status andfreely pursue their economic, social and cultural development.⁸ All peoples 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.⁹ Further, the State parties to the present covenant, Governing and Trust Territories, shall promote the realization of the right of self determination, and respect that right, in conformity with the provisions of the Charter of United Nations.¹⁰

Through Article 2, which occurs in Part II of the Covenant, each State Party to the Covenant “undertakes to 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.¹¹ Where legislative or other measures do not exist to give effect to the rights recognized in the Covenant, each State Party under takes 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.¹² 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.¹³

Through Article 3, the State Parties to the Covenant undertake to ensure the principle of equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant.

Article 5 makes it clear that nothing in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.¹⁴ 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 does not recognize such rights or that it recognizes to a lesser extent.¹⁵

(c) **Civil and Political Rights in Emergency.**- Public Emergency which threatens the life of the nation require emergent or exceptional measures which may not be normally permissible. Article 4 of the Covenants, therefore, permits the State Parties to take measures, during such emergency provided that the existence of which is officially proclaimed, derogated from their obligation under the covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language, religion or social origin.¹⁶ 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 trade or servitude), Article 11 (Prohibition of imprisonment merely on the ground of inability to fulfill a contractual obligation). Article 15 (Prohibition of punishment non any criminal offence not constituting a criminal offence under national or internal law and *post facto* laws), Article 16 (recognition everywhere as a person before law), and Article 18 (dealing with freedom of thought, conscience and religion).¹⁷ 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.¹⁸

(d) **Substantive Civil and Political Rights.**- Article 6 to 27 of Part III of the Covenant enumerate 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 to all persons deprived of their 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 a contractual obligation(Article 11)
- (vii) Right to liberty to movement and freedom to choose residence and right not to be arbitrarily deprived of entering his own country (Article 12);
- (viii) Freedom to aliens lawfully in the territory of a State Party to Covenant from expulsion (Article 13);
- (ix) Right to equality before the Courts and tribunals; right to a fair and public hearing; and 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 a15);
- (xi) Right to be recognized everywhere as a person before the law (Article 16);
- (xii) Right to everyone not to be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence and freedom from unlawful attacks on his honour 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 ward and advocacy of national, racial or religious hatred constituting 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 from 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 state; and the right of every child to acquire a nationality (Article 24);
- (xx) Right to every citizen to take part in the conduct of public affairs,
- (xxi) Right to vote and to be selected, and to have access, on general terms of equality, to public service in his country (Article 25);
- (xxii) Equality before law (Article 26; and

(xxiii) Right of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language (Article 27).¹⁹

The rights set forth in the Covenant on Civil and Political Rights are not absolute and are subject to limitations. While the formulation of the limitations differs 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.²⁰ In time of public emergency 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 time of public emergency. These rights and the rights to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the prohibition of slavery and servitude, the prohibition of imprisonment merely on the ground of failure of liability to fulfill a contractual obligation, the principle *nullapenasinelege*, the right of everyone to recognition as a person before the law, and freedom of thought, conscience and religion.²¹

- (e) **Implementation or Enforcement Machinery (Articles 28 to 45).**²²The 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.²³ The Committee performs the function of implementation of the human rights in following ways:
- (i) The Reporting procedure²⁴;
 - (ii) The Inter-State Communication system ²⁵ (including Conciliation Commission;²⁶
 - (iii) Individual's Communication system.²⁷

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

(f) *Interpretation of Saving Provisions (Articles 46 and 47).*- Part V comprising of Articles 46 and 47 deals with interpretation of 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 dealt with in the present Charter. Article 47 further provides that nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

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

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 January 3, 1976. At present it has been subscribed by as many as 165 State Parties. The optional Protocol came into force on March 23, 1976 and at present has 113 state parties.

2.4 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 may be divided into following heads :

- (a) Preamble
- (b) General (Articles 1 to 5)
- (c) Substantive Rights (Articles 6 to 15)
- (d) Measures for implementation (Articles 16 to 25)
- (e) Final or Concluding Provisions (Articles 26 to 31)

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

(b) **General (Articles 1 to 5).-** Articles 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 in Article 3 speaks of the enjoyment of all economic, social and cultural rights in place of civil and political rights. Article 2 of the Covenant on Economic, Social and Cultural Rights, 1966 (hereinafter to be referred as the 'Economic Covenant') provides the following :

1. Each State Party to the present Covenant undertakes to take steps, individually and through internal assistance and co-operation, especially economic and technical, to the maximum of its available resources, 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 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 Covenant and because economic, social and cultural rights are by their nature more vagur as compared to civil and political rights.

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

- (i) Rights to work freely chosen (Art. 6);
- (ii) Right to the enjoyment of just and favourable conditions of work (Art. 7);
- (iii) Right to from trade unions and join and 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 persons 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 if compulsory education free ofcharge of all within a reasonable number of yers (Article 14); and
- (x) Rights to (i) take part in cultural life ; (ii) enjoy the benefits of scientific, progress and its applications; and (iii) benefit from the protections of the moral and material interests resulting from any scientific, literary or artistic production of which he id the author (Article 15).

(d) **Measurs for Implementation (Article 16 to 25).**-Measures of implementation have been discussed under a separate Chapter. It will suffice to briefly mention here that State

Parties to the Covenant have an obligation to submit to the Secretary-General of the U.N. reports in the measures which they have adopted and the progress made. The Secretary-General shall then transmit 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 recommendation of general nature a summary of the Assembly reports with recommendation of general nature and a summary of the information received from the State Parties to the present Covenant, and the specialized Agencies in the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant. 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 consulting 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 fields. 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 from country to country. It is not possible to prescribe a time-bound programme for the achievement of these rights.

(e) **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, ratifications, 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 Universal Declaration but are not incorporated in the Covenant and *vice versa* there are certain not proclaimed in the Universal Declaration but are incorporated in the Covenants.

Rights Proclaimed in the Universal Declaration but not incorporated in the Covenant.- Rights set forth in the Declaration and not incorporated in the Covenant are the rights of everyone to own property alone as well as in association with others and

the prohibition of arbitrary deprivation of property, the right of everyone to seek and enjoy in other countries asylum from persecution; and the right of everyone to a nationality. The Covenant on civil and political rights, however affirms the rights of every child to acquire a nationality.

Rights, not proclaimed in the Universal Declaration but included in the Covenants.- The most important rights regulated in both the Covenants and not contained in the Universal Declaration is the right of 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 (hereinafter referred to as the "Civil Covenant") provides that in those States in which ethnic, religious 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 practise their own religion or to use their own language.

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 conditions wherein everyone may enjoy "his civil and political rights as well as 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 realisation of civil and political rights is impossible without the enjoyment of economic, social and cultural rights. This relationship between the civil and political rights and economic, social and cultural rights contained in the Civil Covenant and the Economic Covenant respectively was recognized by the International Conference on Human Rights which was held from April 22 to May 13, 1968 at Tehran in connection with the observance of the International Year for Human Rights, which marked the 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 June 14 to 25, 1993. It was in the agenda of the

First Optional protocol to the International Covenant in Civil and Political Rights, 1966.- Through, the First Optional Protocol to the International Covenant on Civil and Political Rights, 1966, (hereinafter to be referred as “optional protocol”) will be discussed in a little greater detail under a separate Chapter entitled “Measures of implementations of Human Rights,” it will be desirable to discuss here briefly the optional Protocol because it is one of the four constituents 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 states that “Considering” that in order further to achieve the purposes of the Covenant on Civil and Political Rights and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in Part IV of the Covenant to receive and consider as provided in the present Protocol, communications from individuals claiming to be the victims of violations of any of 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 violation of by that State Party of any of the rights set forth in the Covenant. 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 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 State Party concerned and to the individuals. 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. It has been ratified by 115 countries by September,

2013. It may be noted that one of the ratifying States, Jamaica has denounced the First Optional Protocol.

The Human Rights Committee has given some decisions. The following are few examples of these decisions.

- (1) *Toomenv. Australia*, (1994).- In this case the Human Rights Committee held that the sexual orientations was included in the Treaty's any-discrimination provisions as a protected States.
- (2) *Waldman v. Canada*, (1999).- In this case it was held that there was religious discrimination in school funding.
- (3) *Diergard v. Nambia*, (2000).- This case was relating to linguistic discrimination in communication with authorities.
- (4) *Ignatanev. Latvia*, (2001).- It was held that there was non-objective way of evaluating official languages skills of a candidate in elections.

Reservations.- A number of States Parties have been made reservation and interpretative declarations to their applications of the optional Protocol.

These are as follows :

- (1) **Australia** has declared that it does not recognize the jurisdiction of the Human Rights Committee to consider complaints which have already been examined by the European Commission on Human Rights.
- (2) According to **Chile, Croatia, El Salvador, France, Germany, Guatemala, Malta, Russia, Slovenia, Sri Lanka, Turkey**, optional Protocol will apply only to complaints which arose after it entered into force for those countries.
- (3) According to **Croatia, Denmark, France, Germany, Iceland, Italy, Luxemburg, Malta, Norway, Poland, Romania, Slovenia, Spain, Sri Lanka, Sweden, Turkey and Uganda**, Human Rights Committee will have jurisdiction to consider complaints which have already been considered under another International Complaint Procedure.
- (4) According to **Germany and Turkey**, Human Rights Committee will not have jurisdiction to hear complaints resulting from Article 26 of the International Covenant on Civil and Protocol Rights covering discrimination and equality before the law, except in so far as they relate to rights expressly affirmed in the covenant.
- (5) **Guyana and Trinidad** do not recognize the jurisdiction of the Human Rights Committee to hear complaints relating to their use of death penalty.

(6) **Venezuela** does not recognize the competence of the Human Rights Committee to hear complaints regarding in-absentia trials for offences against the republic.

Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of Death Penalty, 1989.- This protocol was adopted on 15 December, 1989. It enters into force on 11 July, 1991. By September 2013 it has as many as 77 (Seventy seven) States parties. Article 1 provides that none within the jurisdiction of a State Party to the present optional Protocol shall be executed. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

QUESTIONS

UNIT – II

MSW/P-24 (HR)

Long Type - (Within 1000 words)

1. Discuss the role of United Nations Organisation in developing International Human Rights Law.
2. Enumerate the Significance of Universal Declaration of Human Rights (UDHR) 1948 in protection of life, liberty and dignity of human being.
3. Write the important provisions of UDHR as adopted by the General Assembly of United Nations in 1948.
4. Write a critical note on Covenant on Civil and Political Rights adopted in 1966.
5. Briefly enumerate the importance of International Covenant on Economic, Social and Cultural Rights 1966.

Short Type - (Within 300 words)

Write Short Notes on –

1. Objects of UDHR - 1948
2. Right to Marry
3. Right to Social Security
4. Freedom of Assembly
5. Right to education
6. Civil and Political Rights in Emergency
7. Implementation Machinery under Covenant of 1966
8. Substantive Economic, Social and Cultural Rights
9. 1st Optional protocol to Civil and Political Rights – 1966
10. 2nd Optional Protocol to International Covenant on Civil and Political Rights – 1966

Unit – 3

3.1 Human Rights Declarations

3.2 U.N. Human Rights Declarations

3.3 U.N. Human Rights Commissioner

3.1 HUMAN RIGHTS DECLARATIONS

Human Rights Under UN Charter- At the San Francisco Conference it was expressed by several delegates that the United Nations should establish an international Bill of Rights. Although that could not be done the promotion and respect for human rights which at present constitute so important and so conspicuous be an integrated part of the U.N. Charter.

The result was that the Charter contained a number of provisions for the promotion of human rights and fundamental freedoms in the Preamble and in Article 1, 13, 55, 56, 62(2), 68 and 76(c) which areas follows:

- (1) The Preamble of the Charter in its first substantive paragraph laid down that...we the people of the United Nations determined to reaffirm faith in fundamental human rights. In the dignity and worth of the human person in the equal rights of men and women and of nations large and small.
- (2) Paragraph 3 of Article 1 of the Charter provided that the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the United Nations. However, despite the differences as to what rights and freedoms are the achievement of the maximum freedom and dignity of the human beings was the primary aim of the United Nations.
- (3) The General Assembly and the Economic and Social Council were given the task for the promotion of the promotion of human rights and fundamental freedoms. Most of the issues relating to human rights are considered by the Assembly's Third Committee (Social, Humanitarian and Cultural Committee), but others may be referred to other Committees such as the Sixth Committee (Legal) or the First Committee (Political and Security) or the Special Political Committee).
- (4) Article 55 provided that the United Nations shall promote, (a) higher standard so

flingfull employment and conditions of economic and social progress and development;(b)solution so international cultural and educational cooperation; and (c)universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Universalized and internationalized the concept of human rights which hitherto was adopted in some countries since last 200 years. It was the first international document which recognized there spect for human rights and fundamental freedoms as a principle of International Law. Their recognition and their further realization was deemed necessary as they were regarded as one of the methods of achieving greater unity between he States and also because they are indispensable for the maintenance of international peace and security.

3.2 U.N. HUMAN RIGHTS DECLARATIONS

Promotion and Protection of Human Rights by the United Nations.

The term promotion of human rights may mean setting of international standard of human rights, education and dissemination. The prime responsibility for the promotion of human rights under U.N.Charter rests in the General Assembly, in the Economic and Social Council and its subsidiary body–Human Rights Council.

The term 'protection of human rights 'which may mean implementation and enforcement action doesnot find place in the U.N Chapter. Among the United Nations agencies only the Security Council and the International Court of Justice can engage in enforcement action; only they have a competence to pass a binding resolution or issue a binding judgement. The Security Council can threaten or vote sanctions in relation to its own previous actions or that of the Court. Enforcement is thus the authoritative application of human rights.

(1) Human Rights Consciousness

The first and the most important role which the United Nations has played is that it has made the people and the States conscious about the human rights and

fundamental freedoms. It has set a pace in establishing minimum standards of acceptable behavior by States. The proclamation of the Universal Declaration of Human Rights containing the universal code of human rights may be regarded as the first step towards the promotion and protection of human rights.

(2) Codification of the Law of Human Rights

The United Nations has codified the different rights and freedoms by making treaties for all sections of the people such as women, child, migrant workers, refugees and stateless persons.

(3) Monitoring of Human Rights

Treaty bodies, Special Rapporteurs and Working Groups of the Commission on Human Rights have procedure and mechanism to monitor compliance with conventions and investigate allegations of human rights abuses. A number of expert committees have been established under particular treaties. The Committees are termed "U.N Treaty Organs". Human Rights monitors have also been deployed by the General Assembly as part of peace keeping operations in Haiti, Rwanda, Guatemala and the former-Yugoslavia.

(4) Procedure for Individual's Complaints

A number of human rights treaties permit individuals to make petition before the appropriate international bodies. For instance the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, Convention Against Torture, Convention on the Elimination of Discrimination Against Women, Optional Protocol to the Rights of the Child, a Communication Procedure, the Convention on the Protection of the Right of All Migrant Workers and Members of Their Families and Optional Protocol to the Convention on the Rights of Persons with Disabilities have permitted individuals to make petitions against their States that have accepted relevant international legal procedures. The Human Rights Council is authorized to discuss human rights situations anywhere in the World and examine information from individuals, NGOs and other

sources.

(5) Review of Human Rights Situations

The Human Rights Council has evolved the Universal Periodic Review (UPR) system which involves a review of the human rights records of all the member States of the United Nations to improve the human rights situations.

(6) Coordination of Human Rights Activities

The post of the High Commissioner for Human Rights was created in 1993 with the intention of strengthening the coordination and impact of UN Human Rights activities.

(7) By Providing Advisory Services

The High Commissioner for Human Rights provides advisory services to Governments seeking to improve their human rights performance. Assistance may be given to draft a Constitution, to improve electoral laws, establish or upgrade human rights institutions, prepare new criminal codes or overhaul the judiciary.

(8) Enforcement Action by the Security Council

The Security Council of the United Nations may take enforcement action under Chapter VII of the Charter if it recommends that violations of human rights in a State are likely to endanger international peace and security.

The above points go to prove that the United Nations has been performing a variety of functions successfully to promote and protect human rights and it has promoted global culture of human rights through education and awareness.

3.3 U.N. HUMAN RIGHTS COMMISSIONER

Human Rights Bodies Under The U.N System

A number of bodies have been established under the United Nations system to promote and protect human rights. The first and the foremost important human rights body was the Commission on Human Rights which was appointed by the Economic and Social Council and approved by the General Assembly on February 16, 1946. (Resolution 1/5 of February 16, 1946). Responsibilities of another human rights body—the

Sub Commission on Promotion and Protection of Human Rights established on June 21, 1946 under the authority of ECOSOC Resolution 9(11) of July 21, 1946 were assigned by the Human Rights Council in 2006. Presently, the important human rights bodies under the U.N. Charter system areas follows:-

a. HUMAN RIGHTS COUNCIL

The World leaders- Heads of State and Government met at United Nations Head quarters in New York from September 14 to 16, 2005 and adopted a document at the end of the Summit known as 2005 World Summit Outcome. The Outcome document contained a number of global issues on which the leaders agreed to take action. They agreed to create a U.N Human Rights Council which shall be responsible for the protection of all human rights and fundamental freedoms for all without distinction of any kind and in a fair and equal manner.

The Council as an Inter-governmental body responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them. It may discuss all the human right issues and situations that require its attention. The Council is a subsidiary organ of the General Assembly.

Composition of the Human Rights Council

The Human Rights Council consists of 47 members who are elected directly and individually by secret ballot by the majority of the members of the General Assembly. The membership is based on equitable geographical distribution i.e, 13 from African Group, 13 from Asian Group, 6 from the Eastern European Group and 7 from the Western European and other States Group. The Assembly, by a two-thirds majority of members present and voting could suspend the rights of membership of a Council member who commits gross and systematic violations of human rights. The process of suspension requires a two-third majority vote by the General Assembly. The members of the Council serve for a period of three years and are not eligible for immediate re-

election.

The Council holds regular sessions three times a year i.e, in March, June and September. The Council can decide at any time to hold a special session to address human rights violations and in emergencies at the request of one third of the member States.

Functions of the Human Rights Council

The Council performs the following functions:-

- (a) It shall promote human rights education and learning as well as advisory services technical assistance and capacity building to be provided in consultation with and with the consent of Member States concerned.
- (b) It shall serve as a forum for dialogue on the matic issues on all human rights;
- (c) It shall make recommendations to the General Assembly for the further development of International Law in the field of human rights;
- (d) It shall promote the full implementation of human rights obligations undertaken by States and follow upto the goals and commitments related to the promotion and protection of human rights emanating from United NationsConferencesandSummits;
- (e) It shall undertake a universal periodic review, based on objective and reliable information of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States;
- (f) It shall contribute, through dialogue and cooperation towards the prevention of human rights violations andrespond promptly to human rightsemergencies;
- (g) It shall work in close cooperation in the field of human rights with Governments, regional organizations national human rights instructions andcivilsociety.
- (h) It shall make recommendations with regard to the promotion and protection of human rights.
- (i) The Council shall submit an annual report to the General Assembly.

- (j) The Council shall assume the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commission for Human Rights.

The Council held its first meeting on June 19 ,2006.The Council established the following bodies which are called subsidiary bodies of the Human Rights Council and which reports to the Council directly.

(1)Universal Periodic Review (UPR} The Council adopted a Resolution 5/1 on June 18, 2007 by consensus for a package reforms which included the establishment of UPR. The UPR is a unique process which involves are view of the human rights records of all 192 members of the United Nations once in every four years.Thus 48 States will be reviewed each year.There view will provide an opportunity for all States to declare what actions they hav taken to improve the human rights situations in their countries to overcome the challenges to the enjoyment of human rights. The ultimate goal of UPR is the improvement of the human rights situation in every country. To achieve this, the UPR involves assessing State's human rights violations wherever they occurred.

There views are conducted by the UPR Working Group consisting of 47 members of the Council and it is chaired by the President of the Council. The State has the primary responsibility to implement the recommendations contained in the final outcome. The UP Rensures that all countries are accountable for progress or failure in implementing these recommendations. If the State doesnot co-operate with the UPR the Human Rights Council will decide on the measures itwould need to take in case of persistent non- cooperation by a State with the UPR.

(2) Complaint Procedure - Human Rights Council on June 18, 2007 adopted Resolution 5/1to establish complaint procedure whose, purpose is to address consistent patterns of gross violation of all human rights and fundamental freedoms occurring in any part of the world and under any circumstances. Functions of the Complaint Procedure are carried on by two Working Groups; the Working Group on Communications(WGC)consisting of five independent and qualified expert and the Working Group on Situations (WGS) consisting of five members. They examine written communications and bring them to the Human Rights Council.

(3) Special Procedures - Special Procedures with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) undertake country visits; action individual cases and concerns of a broader structural nature by sending communications to States concerned; conduct thematic studies and convene expert consultations. Special Procedure report annually to the Human Rights Council. Persons performing functions within the scope of Special Procedure are called Special Rapporteur Special Representative of the Secretary-General of Independent Experts.

(4) Advisory Committee - In September 2007, the Council decided to create an Advisory Committee by adopting Resolution 5/1 to provide expert advice at its direction. The Advisory Committee replaced the former Sub-Commission on the Promotion and Protection of Human Rights. The Committee held its first meeting in August 2008. The Committee is composed of eighteen independent experts representing the various regions of the World. Experts are elected by Governments and the Council. They are elected for a period of three years and may be re-elected once. The Advisory Committee provides (a) expertise to the Council in the manner and form requested by it. It mainly focuses on studies and research-based advice;

(b) to propose to the Council for the consideration and approval, suggestions for further research proposals; (c) to implement the promotion and protection of human rights on the issues which come within in scope of its advice.

In addition to the above other subsidiary bodies of Human Rights Council are (i) Expert Mechanism on the Right of Indigenous Peoples which replaced the working Group on Indigenous Populations; (b) Forum of Minority Issues and (c) Social Forum.

Review of the Functioning of the Council - At the time of the creation of the Human Rights Council, the General Assembly decided that the Council shall review its work and its functioning five years after it has come into exist. Accordingly, review of the work and functioning of the Council was done in the year 2011 where in a Resolution 16/21 on April 12, 2011 was adopted entitled 'Out come of the Review of the Work and functioning of the United Nations Human Rights Council.

b. Office of the United Nations High Commissioner for Human Rights (OHCHR)

The Office of the United Nations High Commissioner for Human Rights was established by the General Assembly on December 20, 1993. The Office of the United Nations High Commissioner for Human Rights and the Center for Human Rights. were consolidated on 5th September, 1997. The above reform was made in the wake of the Vienna Conference on Human Rights of 1993 wherein it was stressed that a strong institutional machinery is required to be established in order to promote and protect human rights effectively. The Office is located at Geneva. The OHCHR is headed by a High Commissioner who is appointed by the Secretary General of the United Nations. However, his name is approved by the General Assembly. He shall be a person of high moral standing and personal integrity possessing expert is in the human rights field and an understanding of diverse cultures. Due regard is given to geographical rotation. The High Commissioner shall serve a four-year term at the rank of the under Secretary- GeNERAL .JoseAyalaL as so of Ecuador was nominated by the Secretary-General as the first High Commissioner when his name was confirmed by the General Assembly on February 14, 1994. He assumedoffice on February 14, 1994. Presently, Ms.N.Navanethan Pillay of South Africa is the High Commissioner. She assumed the office on September 1,2008. Her term was extended for an additional two years on September1, 2012, i.e upto Austust 31, 2014. The General Assembly has appointed ZeidRa'ad Zeid Al Hussein after the expiry of the term of Navi Pillay.

The High Commissioner for Human Rights is responsible for all the activities of the OHCHR. He/she carriers out the functions specially assigned by the General Assembly in the Resolution 48/141 of December 20,1993,i.e the resolution which created the post of the High Commissioner. The Specific responsibilities given by the General Assembly under the above resolution are(1)to promote and protect the effective enjoyment by all of all the civil cultural, economic, political and social rights, including the right to development; (2) to provide advisory services, technical and financial assistance in the field of human rights to States that request them;(3) to coordinate United Nations education and public information programmes in the field of human rights; (4)to play an

active role in removing the obstacles to the full realization of human rights and in preventing the continuation of human rights violations throughout the World;(5) to engage in a dialogue with Governments in order to secure respect for human rights;(6) to enhance international cooperation for the promotion and protection of human rights; (7) to corroborate human rights promotion and protection activities throughout the United Nations system and(8) to rationalize, adapt,strengthen and streamline the United Nations machinery in the field of human rights in order to improve its efficiency and effectiveness.

The High Commissioner for Human rights, in the performance of his or her activities is assisted by a Deputy to the High Commissioner who acts as officer-in-charge during the absence of the High Commissioner. In addition the Deputy to the High Commissioner carries out specific substantive and administrative assignments as decided by the High Commissioner. The Deputy is accountable to the High Commissioner.

In addition to the Deputy High Commissioner, Assistant Secretary General for Human Rights based in New York heads the New York office of the High Commissioner. Assistant Secretary-General represents the High Commissioner in New York.

The OHCHR maintains an office at the Headquarters which is called New York office which is headed by an Assistant Secretary-General who is accountable to the High Commissioner.

Functions of the Office of the United Nations High Commissioner for Human Rights

The OHCHR performs the following functions-

1. The OHCHR promotes universal enjoyment of all human rights by giving practical effect to the will and resolve of the World community as expressed by the United Nations.
2. The Office plays the leading role on human rights issues and emphasizes the importance of human rights at the international and national levels.
3. The Office promotes international cooperation for human rights;

4. The Office stimulates and coordinates action for human rights throughout the United Nations system.
5. The Office promotes universal ratification and implementation of international standards;
6. The Office assists in the development of new norms;
7. The Office supports human rights organ and treaty monitoring bodies;
8. The Office responds to serious violations of human rights;
9. The Office undertakes preventive human rights action;
10. The Office promotes the establishment of national human rights infrastructures;
11. The Office undertakes human rights field activities and operations;
12. The Office provides education, Information, advisory services and technical assistance in the field of human rights.¹

QUESTIONS

UNIT – III

MSW/P-24 (HR)

Long Type - (Within 1000 words)

1. Discuss the role of UNO in promotion and protection of Human Rights.
2. Discuss the Composition and Constitution of Human Rights Council.
3. Discuss the power and functions of the Human Rights Council under the Charter.
4. Enumerate the appointment, terms and conditions of Service of the United Nations High Commissioner for Human Rights
5. What are the important functions of the Office of the United Nations High Commissioner for Human Rights, under the Charter.

Short Type - (Within 300 words)

Write Short Notes on –

1. Human Rights Consciousness
2. Monitoring of Human Rights
3. Procedure for Individual Complaints
4. Enforcement Action by the Security Council

5. Human Rights Commissioner
6. Human Rights Council
7. Composition of Human Rights Council
8. Appointment of United Nations High Commissioner for Human Rights
9. Deputy High Commissioner for Human Rights
10. Powers of United Nations High Commissioner for Human Rights

Unit – 4

- 4.1 Amniesty International Human Rights and Helsinik Process
- 4.2 Regional Developments
- 4.3 European Human Rights System
- 4.4 African Human Rights System
- 4.5 International Human Rights in Domestic Courts.

4.1 AMNIESTY INTERNATIONAL HUMAN RIGHTS AND HELSINIK PROCESS

Human Rights and NGOs

NGOs have been established in almost every country. It has been estimated that the number of NGOs in the United States and Russia is estimated that the number of NGOs in the United States and Russia is estimated at 1.5 million and 277000 respectively. India is estimated to have around 3.3 million NGOs in the year 2009 which is just over one NGO per 400 Indians. Since then their growth has been considerably

accelerated Worldwide.

Human rights NGOs are private associations and they demand significant resources for the promotion and protection of human rights. They are independent of both government and all political groups which seek direct political power. Funding of such NGOs demands significant fund raising efforts. Major sources of their funding include membership dues the sale of goods and services grant from international institutions, national governments and private donations. Human rights NGOs are different from NGO's involved in other fields in the sense that the former seek to protect the right so fall members of the society and not to a particular group or constituents.

Leading NGO's

Amnesty International and Human Rights Watch having international activists and membership are the leading NGO's in the field of human rights.

AI's Vision is of a World in which every person enjoys all the human rights enshrined in the Universal Declaration of Human Rights and other human rights standards. In pursuit of this vision. Amnesty International's mission is to undertake research and action focuses do preventing and ending grave abuses of the rights to physical and mental integrity and freedom of conscience and expression and freedom from discrimination within the context of the work to promote all human rights.

Amnesty International has its own methods to protect the right of the human beings. It addresses governments, inter-governmental organizations, armed political groups, companies and other non-state actors. It seeks to disclose human rights issues accurately quickly and persistently. It systematically and impartially researches the fact so individual cases and patterns of human rights abuses. These findings are publicized and members, supporters and staff mobilize public pressure on governments and others to stop the abuses. In addition to its Work on specific abuses of human rights. Amenesty international urges all governments to observe the rule of law and to rectify and implement human rights standards. It also carries out a wide range of human rights

educational activities. It encourages inter-governmental organizations individuals and all organs of society to support and respect human rights. Amnesty International operates through an International Council, International Executive Committee, Sections, Structures, International Networks and International Secretariat.

International Council is the final authority for the conduct of the affairs of Amnesty International. It consists of the members of the International Executive Committee and of the representatives of Sections. It meets at intervals of not more than two years on a date fixed by the International Executive Committee. Only representative of Sections shall have the right to vote at the international Council.

The primary functions of the International Council are (1) to focus on strategy; (2) to set Amnesty International's vision, mission and core values; (3) to determine Amnesty International's integrated strategic plan including its financial strategy; (4) to establish systems and bodies of governance and delegation for the movement, to elect members to those bodies, and to hold those bodies and their members accountable; (5) to evaluate the movement's performance against its agreed strategies and plans, and (6) to hold sections, structures and other bodies accountable.

International Executive Committee consists of the treasurer and eight regular members who shall be individual or international members of Amnesty International Council. It meets not less than twice a year. Members of the International Executive Committee shall hold office for a period of two years and shall be eligible for re-election for a maximum tenure of three consecutive terms. The primary role of the International Executive Committee is to provide leadership and stewardship for the whole of Amnesty International world wide. Its other functions are (1) to take international decisions on behalf of Amnesty International; (2) to ensure that there is sound financial policy for Amnesty International and that the financial policy is consistently implemented across the international organization; (3) to ensure implementation of the Integrated Strategy plan; (4) to ensure compliance with the Statute; (5) to ensure human resources development; (6) to hold Sections, structures and other bodies of Amnesty International accountable for their functioning by presenting reports to the International Council.

A Section of Amnesty International may be established in any country, *State*,

territory or region with the consent of the International Executive Committee. All sections shall have the right to appoint representatives to the International Council. A section, in order to be recognized as such shall (a) demonstrate its ability to organize and maintain basic Amnesty International activities; (b) submit its Statute to the International Executive Committee for approval; (c) pay such annual fee as may be determined by the International Council, and (d) be registered as such with the Secretariat on the decision of the International Executive Committee.

Structure is a national or regional body established by the International Executive Committee, to promote and implement the movement's vision and mission. The purpose of a structure is to coordinate a sustained programme of human rights activities and consolidate its national or regional organizations.

International Network exists to promote and implement the movement's vision and mission, primarily on the basis of a specific theme or identity. The Secretariat includes the Secretary General and the staff. The head of the Secretariat *i.e.*, the Secretary General is appointed by the International Executive Committee. He is responsible for the conduct of the affairs of Amnesty International and for the implementation of the decisions of the International Councils.

Amnesty International is a non-Governmental organization. It is commonly known as 'Amnesty' or 'AI'. It was founded in London following the publication of the article "The Forgotten Prisoners" in the Observer dated 28th May, 1961 by a lawyer, Peter Benenson. It was formally founded in July, 1967 by Peter Benenson with global Headquarters. Its International Secretariat is in London, United Kingdom. It is focused on human rights and protection thereof. Its General Secretary is Salil Shetty. Its service is protection of human rights and as such stated objects of the organization is to conduct research and generate action and to end grave abuse of human rights and to demand justice for those persons whose rights have been violated.

Amnesty International has a long history, recognition and name in the field of human rights. It is famous for setting standards for the movement as a whole for protection of human rights. Amnesty International is a very famous non-governmental organization with more than three million members and supporters around the world.

The methods adopted by it are media attention, direct appeal, research, lobbying etc. Its motto is better to light a candle than to curse the darkness Works of Amnesty International.

The primary target of Amnesty International is governments but it also reports of non-governmental bodies and private individuals. Amnesty International deals with following six-key areas.

- (1)Rights of women, children, minorities and indigenous persons;
- (2)Ending Torture;
- (3)Abolition of Death Penalty;
- (4)Rights of Refugees;
- (5)Rights of Persons of conscience; and
- (6) Protection of human dignity.

As noted above, the stated objects of Amnesty International is to prevent and end grave abuse of human rights and to demand justice for those persons whose rights have been violated. For example, recently, it has focused its attention to grave human rights violations in Syria. A recent and new report by Amnesty International has revealed that war crimes and crimes against humanity have been carried out on Palestinians and Syrian civilians in Yamouk, an outskirts of Damascus(Syria) which is under brutal siege by Syrian Government. Alhas reported that rampant malnutrition has already claimed 128 lives in Yamouk district of Syrian capital Damascus with upto 20,000 people still under siege.

In respect of Ukraine also Amnesty International has reported that journalists, activists and peaceful protestors are facing increasing harassment and intimidation in Cremea. Amnesty International has, therefore, advocated that there is an urgent need for a strong international monitoring mission in Ukraine.

Recently, a student was shot dead and more than 100 protestors were arrested at Khartoum. Onli~~h~~ March, 2014, Amnesty International said the Sudanese Security forces must immediately stop the use of excessive and unlawful force against protestors.

Thus Amnesty International keeps a watch over entire world and does its best to prevent and end grave abuse of human rights and demand justice for those whose

rights have been violated.

As in other parts of the world, Amnesty International is active in India also and works to ensure the respect for human rights and observation thereof. When ever it finds grave abuse or violation of human rights it raises its voice either by direct appeal or by raising the matter before the appropriate international human rights bodies or organizations.

Amnesty International advocates abolition of death penalty all over the world. Therefore in February 2014, Amnesty International said commutation of Rajiv Gandhi's killers—Perarevian, Murugan and Santhan—is an encouraging decision especially in view of landmark relief in January, 2014 to commute 15 death sentences in India.

Similarly, on 24th February, 2014, Amnesty International criticized ban on public screening of 'No Fire Zone ' because it violates right to free speech. The documentary film, "No Fire Zone" was refused Certificate for the atrical release. According to Amnesty, it was a set back to freedom of speech. The film (No Fire Zone "was screened privately in 2013. This film exposes at rocities committed during the final month of SriLankan war in 2009. This was the third production on the subject by the film-maker, Callum Macrae who had produced the award winning films, (Sri Lanka's Killing Fields" and war Crimes Unpunished".

Criticism and Conclusion

Amnesty International is the only non-governmental organization whose reach is so wide as to covers the entire world. Its aim is not only to prevent and end grave abuse of human rights but also to demand justice for those persons whose rights have been violated. Amnesty International can rather be better described as a global movement fighting in justices and promoting human rights. In the field of human rights Amnesty International has a long and broadest name and recognition. It is believed by many to set standards for the movement as a whole. Its decision is not to accept donations from governmental organizations allows it to remain in dependent and impartial.

But even Amnesty International with all good features as discussed above has criticism from some quarters. It has been criticized for excessive pay for management, under protection of overseas staff and associated with adubious record of human

rights. It is also criticized for selection bias, ideological/ foreign policy bias against either non-western countries or western supported countries. Besides this, it is subjected to criticism for its policies relating to abortion. In western circles, Amnesty International is criticized for its policies relating to countries such as Canada, China, Congo, Saudi Arabia, Vietnam, Russia and the United States of America. They allege and criticize Amnesty International for its one-sided reporting or/and failure to treat threats to security as a mitigating factor. As of February, 2011, there has been a dispute between British Union and Amnesty International over former's foreign based worker's rights. Being a non- governmental organization, there is no legal sanction behind actions of Amnesty International.

Despite the above noted criticism and short-comings, it has to be admitted Amnesty International has rendered signal service for the cause of human shall over the world.

Its motto that it is better to light a candle than to curse the darkness' and

Its vision of a world in which every person enjoys all the human rights enshrined in Universal Declaration of Human Rights and other International human rights standards "are really praise worthy.

4.2 REGIONAL DEVELOPMENTS

a. EUROPEAN HUMAN RIGHTS SYSTEM

Article 13 of the convention provides that everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity. Under Article 15, general power of derogation is available in time of war or other public emergency threatening the life of the nation. However, this power of derogation can be exercised only to the extent strictly required by the exigencies of the situation and the measures adopted should not be inconsistent with the State's other obligations under international law. Article 16 lays down that nothing contained in Articles 10, (freedom of expression), 11 (freedom of assembly), or 14 (non-

discrimination) shall be regarded as preventing the Parties from imposing restrictions on the political activities of aliens.

- A. **The European Commission of Human Rights.-** To consider petitions from any person, non-Governmental Organisations or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided the high Contracting Parties against which the complaint has been lodged has accepted by making a declaration to this effect the competence of the Commission to receive such petition.

Procedure on the admissibility of the petition.- Under the new procedure established under protocol No. 8 adopted in 1990. petitions presented to the Commission are first assigned to a member of the Commission designated as Rapporteur. The Rapporteur after examining the petitions prepares a report on its admissibility and transmit the report either to a Committee or to a Chamber. The Committee after examining the reports. May decide that the petition is not admissible. The cases which do not raise serious questions involving the interpretation of the Convention are transmitted to Chamber which decide the case on the basis of estblished case law. Petitions raising serious issues including cases previous referred to a Chamber, are transmitted to the Commission. Less than fifteen percent of all cases reach this stage.

B. AFRICAN HUMAN RIGHTS SYSTEM

African Charter On Human And Peoples Rights

The creation of a regional agency to protect human rights was first proposed at the African Conference on the Rule of Law at Lagos (Nigeria) in 1961. The Conference sponsored by the International court of justice under the auspices of the international commission of Justice adopted a resolution known as Law of Lagos started in Para 4 that this Conference invites the African Government to study the possibility of adopting the African Convention on Human Rights. A similar proposal was also made during the U.N. Seminar on Human Rights in Developing Countries held in Dakar (Senegal) in 1966.

The African Charter also known as Banjul Charter was adopted on June 27 , 1981 and entered into force on October 21. 1986. The Charter has been ratified or acceded to by 53 States members of the Organisation of African Unity (OAU). The Constitutive Act of the African Union (AU) has replaced the Organisation of African Unity (OAU) on July 9, 2002. The AU was officially launched at the Durban Summit held in 2002 when the First Assembly of the AU Heads of States was convened. In 1998 a Protocol to the African Charter was adopted by which African Court was established. The Court came into force on January 24, 2004.

The African Charter is unique in the sense that it has given emphasis on 'people's rights' which reflect African social traditions of collective and group life. The individual is not seen as independent of society but subordinated to the group. The Charter therefore stipulates rights as well as duties of individuals.

While Charter I of the Part I lays down the rights, duties of the individuals are started in Chapter II. Following are human and people's rights :

1. Equality before the law (Article 3).
2. Right to respect for his life and the integrity of his person (Article 4).
3. Right to respect of the dignity in a human being and the recognition of his legal status (Article 5).
4. Right to liberty and to the security of his person (Article 5).
5. Right to have his cause heard. This comprises (a) right to an appeal to competent national organs against acts of violating his fundamental rights: (b) right to be presumed innocent until proved guilty : (c) right to defence : and (d) the right to be tried within a reasonable time by an impartial court or tribunal (Article 7).
6. Freedom of conscience, the profession and free practice of religion (Article 8).
7. Right to receive information (Article 9).
8. Right to free association (Article 10).
9. Right to assemble freely with others (Article 11).
10. Right to freedom of movement and residence (Article 12).
11. participate freely in the government of his country (Article 13).
12. Right to property (Article 14).

13. Right to work under equitable and satisfactory conditions (Article 15).
14. Right to enjoy the state of physical and mental health (Article 16).
15. Right to education (Article 17).
16. The family shall be the natural unit and basis of society (Article 18).
17. Right to equality (Article 19).
18. Right to existence (Article 20).
19. Right to dispose wealth and natural resources (Article 21).
20. Right to economic, social and cultural development (Article 22).
21. Right to national and international peace and security (Article 23).
22. Right to a general satisfactory environment (Article 24).

The above rights show that the African Charter has not separated political, and people's right into separate conventions like the European and American Convention.

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

The Charter under Chapter II deals with the duties of the individuals of the Contracting Parties which are as follows :-

- (1) Duty towards his family and society, the State other legally recognized communities and international communities (Article 27, Para 1).
- (2) Duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance (Article 28).
- (3) Duty to preserve the harmonious development of the family and to work for the cohesion and respect of the family, to respect his parents at all times, to maintain them in case of need (Article 29).
- (4) Duty to serve his national community (Article 29).
- (5) Duty not to compromise the security of the State whose national of resident he is (Article 29).
- (6) Duty to preserve and strengthen social and nation security (Article 29).

- (7) Duty to preserve and strengthen the national independence and the territorial integrity of his country (Article 29).
- (8) Duty to work to the best of his abilities and competence, and to pay taxes imposed by law in interest of the of the society.
- (9) Duty to preserve and strengthen positive African cultural values in his relations with other members of the society (Article 29).
- (10) Duty to contribute at all times to the promotion and achievement of African unity (Article 29).

African Commission on Human and People's Rights

The Charter established a commission in 1986 to promote human and people's rights and ensure their protection in Africa.¹ The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation known for their high morality, integrity, impartiality and competence in matters of human and people's rights, particularly consideration being given to persons having legal experience.² The members of the Commission shall serve in their personal capacity.³ There shall be a secretary of the Commission who shall be appointed by the Secretary-General of the Organisation of African Unity.⁴ He shall provide the staff and services necessary for the effective discharge of the duties of the Commission.

The function of the Commission are under Article 45 which are as follows :-

1. To promote human and people's rights and in particular (a) to collect documents, undertake studies and researches on African problems in the fields of human and people's rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and people's rights, and should the case arise, give its views or make recommendation to governments; (b) to formulate the lay down principles and rules aimed at solving legal problems relating to human and people's rights and fundamental freedoms upon which African Governments may base their legislations; (c) co-operate with other African and international institutions concerned with the promotion and protection of human and people's rights.

2. The Commission shall ensure the protection of human and people's rights.
3. The Commission shall interpret all the provisions of the Charter at the request of a State Party, an institution of the OAU or an American Organization recognized by the OAU.
4. The Commission shall perform any other task which may be entrusted to it by the Assembly of Heads of State and Government.

Implementation Machinery :- The Charter also provided an implementation machinery under Article 67 which stated that if a State Party to the Charter has good reasons to believe that another state party to the Charter has violated the provisions of the Charter, it may draw the attention of that State to the matter in writing. The communication also be addressed to the Secretary-General of the OAU and to the Chairman of the Commission. The State to which the communication is addressed shall give the inquiring State written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable and the redress already given or course of action available. If within three months from the date on which the original communication is received by the State to which it is addressed., the through bilateral recognition or by any other peaceful procedure, either the Chairman and shall notify the other State involved.

If a State Party to the Charter considers that another State Party has violated the provisions of the Charter. It may refer the matter directly to the Chairman to the Secretary-General of the Organisation of African Unity and the State concerned. The Commission can only deal with a matter submitted to it if all local remedies have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

The Secretary of the Commission shall make a list of the communications other than those of State Parties before each session and transmit them to the members of the Commission who shall indicate which Communication should be considered by the Commission. A Communication shall be considered by the Commission if a simple majority of its members so decided. Such a communication shall

be conserved if they (1) Indicate their authors even if the latter request anonymity: (2) Are compatible with the Charter of the Organisation of African Unity or with the present Charter : (3) Are not written in disparaging or insulting language directed against the State concerned and its institutions to the organization of African Unity: (4) Are not based on news discriminated through the mass media: (5) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged: (6) Are submitted within a reasonable period from the time local remedies are exhausted or from date the Commission is seized of the matter: and (7) Do not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the united nations, or the Charter of the Organisation of the African Unity or the provisions of the present Charter. (Article 56) The Chairman of the Commission shall Communicate all the communications to the knowledge of the State concerned prior to any substantiating consideration. (Article 57)

All measures taken by the Commission shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decided (Article 59). The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Head of State and Government. (Article 59)

The Commission shall draw inspiration from international law on human and people's rights particularly from the provisions of the various African instruments on human and people's rights., the Charter of the United Nations, the Charter of the Organisation of the African Unity, the Universal Declaration of Human Rights , other instructions adopted by the United Nations and by African countries in the field of human and people's rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the Parties to the present Charter are member (Article 60). The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general of special international conventions laying down rules expressly recognized by member States of the Organisation of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law,

general principles of law recognized by African States as well as legal precedents and doctrines. (Article 61)

The Charter also recognized the reporting system under Article 62. Each State Party shall undertake to submit every two years, from the date Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized guaranteed by the Charter.

4.5 INTERNATIONAL HUMAN RIGHTS IN DOMESTIC COURTS

a. African Court On Human And Peoples's Rights

The process for the creation of the African Court was initiated at the Summit of Heads of State and Government of the Organisation of African Unity (OAU) in Tunis in June 1994. A resolution adopted therein requested the Secretary-General of the OAU to convene a meeting of government expert to the examine ways of enhancing the efficiency of the African Commission on Human Rights and to consider in particular the question of the establishment of an African Court. A draft of the Court was submitted by the OAU Secretariat to a meeting of government experts in Capetown in September 1995. Later, a number of meetings were held and the African Court on Human and People's Right was established by adopting a Protocol to the African Charter on Human and people's Rights on June 9, 1998 at the Summit of Heads of State and Government in Ouagadougou (Burkina Faso). The Protocol came into force on January 24, 2004.

COMPOSITION OF THE COURT

The Court consists of 11 judges elected by the member States of the OAU for a six year term of office which is renewable once only. Only the State Parties to the Protocol may propose candidates. Each State may nominate three candidates, at least two of whom must be their nationals, but the Court may not comprise more than one national of the same State. The judges of the Court are elected by Secret ballot by the Assembly of Head of State and Government of the OAU. The judges are elected in individual capacity from among jurists of high moral character and of recognized practical judicial of academic experience in the field of human rights. The judges are therefore not representatives of the States. They undertake to discharge their duties

impartially and faithfully. The Court elects its President and Vice-President for a two-year period, renewable once only. The Court is located in Arusha (Trzania).

JURISDICTION OF THE COURT

The Court is empowered to act both in a judicatory and an advisory capacity. Judicatory jurisdiction is compulsory as well as optional. As regards the Court's compulsory Jurisdiction Article 5(2) states that the following are entitled to submit cases to the Court : (a) the African Commission on Human and people's Rights: (b) State Party which has filed a complaint to the Commission: (c) the State Party against which the complaint has been filled. (d) the State Party whose whose citizen is a victim of a human rights violation and (e) African Inter-Governmental Organisations for issues concerning them. Individuals petition system is optional, Article 5. Para 3 of the protocol provides that the Court may receive individual petitions against a State which has recognized the competence of the Court to receive such communications. Thus, the individuals communication provisions of the Protocol are similar to that of the Optional Protocol to the Covenant on Civil and Political Rights.

The Court is empowered to render advisory opinion in accordance with Article 4 of the Protocol, at the respect of a Member State or of an organization recognized by the OAU. On any legal matter relating to the Charter of any other applicable African human rights instruments. Advisory opinions of the Court could serve as a reference for a dynamic and progressive interpretation of the African Charter on Human Rights and other human rights conventions.

JUDGEMENT OF THE COURT

The Court is required to render judgement within 90 days after it has ended its deliberations. The judgements of the Court are decided by majority. Each judge is entitled to add his separate or dissenting opinion to the majority decision of the Court. The reasons for the judgement must be given and the judgement is read out in open Court after due notice have been given to the parties. The Court delivered its first judgement on December 5, 2009, finding on application against Senegal admissible.

The judgement of the Court is final and not subject to appeal. The Court may however interpret its own decision and even review it, but only, in the light of new evidence under conditions to be set out in Rules of Procedure. Execution of the Court's judgement is basically voluntary.

The African system for the protection of human rights has been undoubtedly strengthened by the adoption of the Protocol to the African Charter on Human and People's rights on the establishment of the African Court on Human and People's Rights. However, the Court has not come into force for want of ratification. The African Court was the missing element of an effective regional system for the protection of human rights and its establishment marks beyond any doubt the beginning of a new era in the promotion of the rule of law in Africa.

B. The European Court of Human Rights.- The European Court of Human Rights consists of a number judge equal to the number of the members of the Council of Europe and no two judges shall be the national of the same State. They shall be the persons of high moral character and shall possess such other judicial office of are jurists of recognized competence. Judges are elected for nine year terms by the parliamentary assembly of the Council of Europe.

The jurisdiction of the Europe Court of Human Rights is optional. It has jurisdiction in respect of only those States which have expressly accepted its jurisdiction by making a declaration to this effect. Article 46 of the Convention, however , provides that any State Party to the Convention may at any time declare that it recognizes as compulsory *ipso facts* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention. This declaration may be made either unconditionally or subject to the condition of reciprocity. However, its jurisdiction may also be accepted in a specific case either as a plaintiff or defendant. Thus the European Court of Human Rights can exercise its jurisdiction in a case referred to it within three months from the date on which the Commission's reports concerning the case was transmitted to be committee of Ministers provided the State concerned has accepted the jurisdiction of the Court. Under Protocol No. 2 to the Convention the Court has advisory jurisdiction to a limited extent. The advisory opinion

can be requested by the Committee of Ministers on legal question not falling within the Court's optional jurisdiction.

QUESTIONS

UNIT – IV

MSW/P-24 (HR)

Long Type - (Within 1000 words)

1. Discuss the role of Amnesty International in protection of Human Rights.
2. What are the regional arrangements functioning in different parts of the World for the promotion and protection of Human Rights in those regions.
3. Discuss the power and function of the European Commission of Human Rights.
4. Write in brief the role of African Commission on Human Rights and People's Rights in Protection of Human Rights.
5. Discuss the composition power and jurisdiction of African Courts on Human Rights and People's Right.

Short Type - (Within 300 words)

Write Short Notes on –

1. Amnesty International
2. International NGO's on Human Rights
3. European Commission on Human Rights
4. African Charter on Human Rights and Peoples Rights
5. African Commission on Human Rights and peoples Right
6. Implementing Machinery of African Commission on Human Rights
7. Composition of African Court on Human Rights
8. Jurisdiction of African Court on Human Rights
9. Composition of European Court of Human Rights

10. Jurisdiction of European Court of Human Rights

Unit – 5

- 5.1 Contemporary Issues on Human Rights:
- 5.2 Children's Rights
- 5.3 Women's Rights
- 5.4 Dalit's Rights, Bonded Labour and Wages
- 5.5 Refugees
- 5.6 Capital Punishments
- 5.7 Fundamental Rights in the Indian Constitutions
- 5.8 Directive Principles of State Policy –
- 5.9 Fundamental Duties
- 5.10 National Human Rights Commission.

5.1 CONTEMPORARY ISSUES ON HUMAN RIGHTS:

There are certain groups of human beings which either by nature or because of deep-rooted custom are weak and vulnerable. Such as, a child, women, disabled persons, aged persons, migrant workers or persons belonging to a particular race. However, they being human beings do possess human rights and fundamental

freedoms. A number of conventions have been concluded under the auspices of the United Nations to protect their rights which are as follows.

5.2 CHILDREN'S RIGHTS

The Universal Declaration of Human Rights had stipulated under Para of Article 25 that childhood is entitled to special care and assistance. The above principle along with other Principles of the Universal Declaration concerning the child were incorporated in the Declaration of the Rights of the child adopted by the General Assembly on November 20, 1959. The International Covenant on Civil and Political Rights under Articles 23 and 24 and the International covenant on Economic, , Social and cultural Rights under Article 10 made provision for the care of the child. In a number of other international documents it was stated that the child should grow up in a family environment, in an atmosphere of happiness, love and understanding. Although principles were not binding on the states. It was therefore realized that a convention is prepared which should be legally `binding on States.

The Convention on the Rights of the Child (CRC) was adopted by the General Assembly by consensus, on the 30th Anniversary of the Declaration on November 20, 1989 which came into force on September, 1990. As on May 4, 2014 the Convention had 194 State parties. The Convention has 54 articles and is divided into three Parts. The CRC is the first globally binding treaty for the protection of children's civil, political, economic, social and cultural rights. After the conclusion of the Convention the child became an active subject of rights. CRC , in fact provided a bill of rights for children. The Convention under Article 1 states that a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Rights of the Child

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

1. Right to life (Article 6, Para1);
2. Right to acquire nationality (Article7);
3. Right to freedom of expression (Article 13, Para1)
4. Right to freedom of thought, conscience and religion (Article 14, Para1)

5. Right to freedom of association and to freedom of peaceful assembly (Article 15, Para1)
6. Right to Privacy (Article 16)
7. Right to family environment (Article 20)
8. Right to education (Article 28 , Para1)
9. Right to benefit from social security (Article 26, Para1)
10. Right to a standard living adequate for the child's Physical, mental, Spiritual and social development (Article 26, Para1)
11. Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24, Para1)
12. Right to the protection of the a law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence (Article 16, Para1)
13. Right against exploitation of child labour (Article 32)
14. Right against sexual exploitation (Article 34)
15. Right against sexual exploitation (Article 35)
16. Right against other forms of exploitation prejudicial to any aspect of the child's welfare.

Implementation Procedure

A Committee on the rights of the child (CRC) has been monitoring the Convention since 1991. The Committee in accordance with Article 43 of the Convention, is composed of ten experts of high moral standing and recognized competence. The members of the Committee are elected for a term of four years and are eligible for re-election. The first session of the Committee was held in Geneva in 1991. The conference of state parties to the Convention on December 12, 1995 adopted an amendment to article 43 increasing the membership of the Committee to 18 experts. The amendment was approved by the General Assembly on December 21, 1995. The members of the committee are elected by secret ballot from a list of persons from among its own nationals.

State Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized therein and on the progress made on the enjoyment of

those rights. States are required to submit their first report within two years of the entry into force of the convention and every five years thereafter. Reports of the States shall also indicate factors and difficulties, if any, efficient information to provide the committee with a comprehensive understanding of the implementation of the Convention in the country concerned. The Committee may request from State parties further information relevant to the implementation. The Committee is required to submit reports on its activities every two years to the General Assembly through the Economic and Social Council. The Committee may recommend to the General Assembly that the Secretary General be requested to undertake on its behalf studies on specific issues relating to the rights of the child and may make suggestions and general recommendations.

The rights of the child are inalienable and the state which neglects their rights is indeed guilty of lack of humanism. Presently, millions of victims of human rights are children. They continue to be the most vulnerable sector of the society particularly in situation of conflicts or in other emergencies. A concerted effort is required to be taken among states, civil society and inter governmental institutions in order to further initiatives that focus attention of children's issues.

Commission for protection of child rights Act (2005)

In order to give effect to the policies adopted by the Government for the protection of the rights of the child the commission for the protection of child rights Act 2005 was enacted on January 20, 2006.

The commission shall consist of a chairperson who shall be a person of eminence and has done outstanding work for promoting the welfare of children and six members. Out of which at least two shall be women, to be appointed by the central Government from amongst persons of eminence ability, integrity, standing and experience in education, child health, care welfare or child development, Juvenile care or care of neglected or marginalized children or children with disabilities, elimination of child labor children in distress, child psychology or sociology and laws relating to children. The office of the commission shall be at Delhi.

The commission shall perform a number of functions as provided under section 13 of the Act which includes a) examine and review the safeguards provided by or under any law for the time being in force for the child rights b) present to the central Government

annually and at such other intervals, as the commission, may deem fit, reports upon the working of these safeguards, c) inquire into violation of child rights and recommend initiation of proceedings in such cases d) examine all factors that inhibit the enjoyment of rights of child affected by terrorism, communal violence riots natural disaster, domestic violence. HIV/AIDS trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures e) look into the matters relating to children in need of special care and protection f) study treaties and other international instruments and undertake periodical review of existing policies and programmes and other activities on child rights g) undertake and promote research in the field of child rights h) spread child rights literacy among various sections of the society i) inspect any juvenile custodial home or any other place of residence or institution meant for children j) spread child rights literacy among various sections of the society i) inspect any juvenile custodial home or any other place of residence or institution meant for children j) inquire into complaints and take suo motu notice of matters relating to deprivation and violation of child rights and k) such other functions as it may consider necessary for the promotion of child rights.

The act also provided for the constitution of State Commissioner for the protection of child rights.

World summit for children (1990) in New York to bring attention and promote commitment, at the highest political level to goals and strategies for ensuring the survival, protection and development of children as key elements in the socio-economic development of all countries and human society. The summit adopted the World Declaration on the survival, Protection and Development of Children and the plan of action for implementing the World Declaration.

While the declaration is a moral and joint commitment, the plan of action is a practical guide for national governments, international and non governmental organizations to ensure the implementation of the Declaration's specific principles. The action plan sets specific goals for children and development in the next decade (1990-2000) some of the goals are as follows-

- i) Reduction of under five child mortality rate by one third or 70 per 1000 live births, whichever is less.
- ii) Reduction of maternal mortality rate by half.
- iii) Reduction of severe and moderate malnutrition among under five children by half.
- iv) Universal access to safe drinking water and to sanitary means of excrete disposal.
- v) Universal access to basic education and completion of primary education by at least 80 percent of primary school age children.
- vi) Improved protection of children in especially difficult circumstances.

Special session on children

The General Assembly for the first time decided to hold a special session on issue relating to children from September 19 to 21 , 2001 in New York .The Conference was to make review of progress made since world summit for children where governments committed to specific and time bound goals on child survival, protection and development. However, the conference was postponed due to terrorist attacks in the united states on September 11, 2001.

The special session on children, later on was held on May 2002 in New York. The three day session starting from May 6, 2002 reviewed the progress made for children since the 1990. World summit for children. After deliberation. The assembly adopted. A world fit for children setting out goals and a specific plan of action to help millions of young people across the globe to receive adequate education, health services and standards of living. The text confronts pressing issues of child mortality. AIDS exploitation and poverty. The texts plan of action established new goals for children and set out specific targets in the fields of health, education, protection against abuse, exploitation and violence , as well as the struggle against HIV/AIDS.

5.3 WOMEN'S RIGHTS

The advancement of women has been a focus of the work of the United Nations Since its creation. The Preamble of the Charter of the United Nations sets as a basic goal to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women.

As early as in 1946 the Commission on the Status of Women was established to deal with women's issues. The Universal Declaration of Human Rights affirmed the principle of the Inadmissibility of discrimination and proclaimed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.

The General Assembly on November 7, 1967 adopted a Declaration¹ on the Elimination of Discrimination Against women, and in order to implement the principles set forth in the Declaration, a Convention on the Elimination of all Forms of Discrimination Against Women was adopted¹ by the General Assembly on December 18, 1979 after five years of consultations with the Commission on the Status of Women (CSW).

Definition of 'Discrimination Against Women':

The Convention under Article 1 defines the term "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field².

The Convention under Part III lays down a number of fields where State Parties are required to take steps to eliminate discrimination against women which includes the following:-

- (1) **Education:-** The Convention under Article 10 Provides that women shall be provided same conditions for careers and vocational guidance as to that of men. They shall be provided same access to studies for the achievement of diplomas in educational establishments of all categories in rural as well as in Urban areas. This equity shall be provided in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.
- (2) **Employment:-** The Convention under Article 11 provided that State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment providing the same rights, in particular, (a) the right to work: (b) right to

same employment opportunities: (c) right to free choice of profession and employment; (d) right to equal remuneration including benefits and to equal treatment in respect of work of equal value as well as equity of treatment in the evaluation of the quality of work; (e) the right to social security particularly in cases of retirement , unemployment, sickness , invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) right to protection of health and to safety in working conditions. There shall be no discrimination against women on ground of marriage or maternity.

(3) **Healthy Care-** The Convention under Article 12 Provides that State Parties shall take steps to eliminate discrimination against women in the field of healthy care, access to health care services, including those related to family planning.

(4) **Economic and Social Life-** Article 13 of the Convention provides that discrimination against women shall be eliminated in other areas of economic and social life. They shall be provided, the same rights as to that of men in particular (a) the right to family benefits; (b) the right to bank- loans , mortgages and other forms of financial credit; (c) the right to participate in recreational activities, sports and all aspects of cultural life.

(5) **Women in Rural Areas-** Article 14 provided elimination of discrimination against rural areas. State Parties are required to ensure such women the right (a) to participate in the elaboration and implementation of development planning at all levels; (b) to have access to adequate health care facilities, including information, counseling and services in family planning; (c) to benefit directly from social security programmes; (d) to obtain all types of training and education , formal and non-formal , including that relating to functional literacy, as well as. *Inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency; (e) to organize self- help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self- employment; (f) to participate in all community activities ; (g) to have access to agricultural credit and loans , marketing facilities , appropriate land resettlement schemes; and (h) to enjoy adequate living conditions.

(6) **Equality before Law-** Article 15 of the Convention provides that State Parties shall accord to women equality with men before the law. Women shall have equal rights

to conclude contracts and to administer property and State Parties shall right to conclude contracts and to administer in court and tribunals.

(7) Marriage and Family Relations- Article 16 provides that State parties shall take all measures to eliminate discrimination against women in all matters relating to marriage and family relations. Women shall be provided (a) the same right to enter into marriage; (b) the same rights, and responsibilities during marriage and at its dissolution; (c) the same rights and responsibilities as parents , in matter relating to their children. In all cases the interests of children shall be paramount; (d) the same rights to decide freely and responsibly on the number and spacing of this children and to have access to the information, education and means to enable them to exercise their rights: (e) the same rights and responsibilities with regards to guardianship ward ship , trusteeship and adoption of children; (f) the same personal rights as husband and wife , including the right to choose a family name, a profession and an occupation; (g) the same rights for both spouses in respect of the disposition of property, whether free of charge or for a valuable consideration.

State parties to the convection condemned discrimination against women in all its forms¹ and agreed to pursue by all appropriate means to eliminate discrimination against women and, to this end they undertook:

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

Conferences on Women

In addition to the above Conventions three Conferences held during the U.N. sponsored International Women's Decade (1976-1985) Mexico City, 1975; Copenhagen, 1980, and Nairobi, 1985 and the Fourth World Conference on women held in Beijing in 1995, have greatly enhanced international awareness of the concerns of women and provided the groundwork for invaluable links between the national women's movements and the international community. In the Nairobi Conference, Forward Looking Strategies for women to the year 2000 was produced but that could not be implemented adequately in many areas though there were clear signs of progress in the areas of education, health and access to employments.

Beijing Conference (1995)

The Fourth world Conference on Women, held in 1995 (4-15 September, 1995) in Beijing, Commonly called Beijing conference stated that 'Women's rights are human rights', The Conference called for the integration of women's human rights in the work of the different human rights issues. The Conference also called for the eradication of any conflicts which may arise between the rights of women and the harmful effects certain traditional or customary practices, cultural prejudices and religious extremism.

A draft Programme of Action was prepared for consideration in Beijing Conference which identified 12 critical areas of concern regarding women which were: increasing burden, poverty; educational opportunities; inequality in health status; violence against women; effects of armed or kinds of conflicts on women, inequality in women's access to and women in the sharing of power and decision making at all levels; insufficient mechanisms at all levels to promote the advancement of women; lack of awareness of women's human rights; insufficient mobilization of mass adequate recognition and support for women's contribution in managing natural resources and safeguarding the environment and girl child.

The United Nations General Assembly in 2000 convened a Special session on women in 2000: Gender Equity, Development and Peace for the 21st Century to assess the progress on women's issues since the Beijing Conference in 1995. The Special

Session, also known as Beijing +5 renewed the Beijing Declaration and Platform for Action adopted at the Beijing Conference on women in 1995. At the Beijing +10 Review at the Commission on the Status of women in 2005 it was made clear that gender equality and human rights need to be placed at the Center of human development and human security.

These conferences and the Convention Elimination of All Forms of Discrimination Against Women could not achieve the desired effect in view of the fact that women's human rights are still disregarded and violated worldwide in different ways and to varying degrees. Discrimination against women exists because it has roots in societal norms and values that do not change as a result of international agreements or even by legislation.

CEDAW Committee in 2004 stated that even after 25 years after the adoption of the Convention on the Elimination of All forms of Discrimination against women, not country win the World has achieved total equality between the sexes both in law and in practices.

The effective implementation of the goals and objectives of the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly was reiterated by the 2005 world Summit out come. The Summit resolved to promote gender equality and eliminate pervasive gender discrimination by (a) eliminating gender inequalities in primary and secondary education by the earliest possible date and at all educational levels by 2015, (b) guaranteeing the free and equal right of women to own and inherit property and ensuring secure tenure of property and housing by women(c) ensuring equal aces to reproductive health d) promoting women's equal access to labour markets, sustainable employment and adequate labour protection e) ensuring equal access of women to productive asses and respruces, including land, credit and women to productive assets and resources, including land, credit and technology f) eliminating all forms of discrimination and violence against women and girl child, and v) promoting increased representation of women.. In government decision making bodies, including through ensuring their equal opportunity to participate fully in the political process.

Status of women in India

India has given equal status to women under its constitution under article 14 which provides that. The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The above provision clearly shows that women in India enjoy right to equality and any discrimination against them shall be violation of equality of right and respect for human dignity. The constitution also provides under Article 15 that every female citizen has a right to access to shops, Public restaurants, hotels and places of public entertainment and no restriction can be imposed on female citizens with regard to the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly by State funds, Article 16 of the constitution provides that there shall be equality of opportunity for all citizens (including women) in matters relating to employment or appointment to any office under the state.

Women in India enjoy right to equality. However, in order to improve their status further, the constitution provides under Article 15(3) that State may make special provisions for women.

The constitution has also cast the duty on every citizen to renounce practices derogatory to the dignity of women. It being a part of directive principles of state policy is not enforceable in a court of law but if the state makes any law to prohibit any act or conduct in violation of this duty, the court, would uphold the law as a reasonable restriction of the fundamental rights.

Indian courts on the basis of above constitutional provision have regarded a number of rules and regulations as discrimination against women, and consequently, unconstitutional. For instance in C.B. Muthamma v. Union of India, validity of the Indian foreign service (conduct and Discipline) rules of 1961 was challenged which provided that no married women shall be entitled as a right to be appointed to the services and a women member of the service shall obtain the permission of the Government in writing before the marriage is solemnized and at any time after the marriage a women member of the service may be required to resign from service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service. The Supreme Court held that the provisions in Service Rules requiring a female employee to obtain the permission of the Government in writing before her marriage is solemnized and denying

right to be appointed on ground that the candidate is a married women are discriminatory against women. The court however held that equality of opportunity in matters relating to employment does not mean that men and women are equal in all occupations and all situations. In *Air India v. NergeshMeerza*, the supreme Court struck down the provision of the rules which stipulated the condition that services shall be terminated on her first pregnancy as unconstitutional. The Court stated that “It seems to us that the termination of the services of an air hotess under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood- the most sacrosanct and cherished institution.” However, restriction on Air Hostess not to marry within four years of service was held reasonable. In *Maya Devi v. State of Maharashtra* , the requirement that a married women should obtain her husband’s consent before applying for public employment was held invalid and unconstitutional. It was observed that such a requirement is an anachronistic obstacle to women’s equality. In *Pratibha Rani v. Suraj Kumar*, it was held by the Supreme Court that it cannot be said that upon entering `into matrimony the Stridhan property of the married women has to be placed in the custody of her husband. In *GithaHariharan v. Reserve Bank of India*. The supreme Court while `interpreting the word ‘after’ used in Sec. 6 of the Hindu Monority and Guardianship Act. 1956 held that the mother could be the guardian in absence of the father. In *AnujGarg& other vs. Hotel Association of India* constitutional validity of section 30 of the Punjab Excise Act of 1914 which prohibited employment of any woman in any part of such premises in which liquor or intoxicating drug is consumed by the public. The Delhi High Court held that the above provision of the Act is ultra vires of Articles 19(1)(g). 14 and 15 of the Constitution to the extent it prohibits employment of any woman in any such premises in which liquor or intoxicating drugs are consumed. The Supreme Court, on appeal, observed that instead of prohibiting women’s employment in the bars altogether, the State should focus on factors by which unequal consequences of se differences can be eliminated. The Supreme Court further observed that it is the duty of the society to ensure circumstances of safety which may inspire confidence in women to discharge their duty freely in accordance to the requirements of the profession they choose to follow.

Vishaka Case and the Sexual Harassment of the women at Workplace

In Vishaka and others v. State of Rajasthan, the Supreme Court presented a law until the legislature legislates to safeguard the interest of the working women and protect them from sex exploitation at the place of work. In this case a writ petition was filled before the Supreme Court by certain social activists and NGO's with the aim of preventing sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation. The immediate cause for the filing of the petition was an incident of alleged brutal gang rape of a social worker Bhanwari Devi in a village of Rajasthan, who fought the practice of child marriage as a part of her job as sathin in the villages. It was observed by marriage as a part of her job AS Saathin in the villages. It was observed by the court that there is no domestic law to check the evil of sexual harassment of working women at all work places, and therefore the contents of International Conventions and norms are significant for providing guarantee of gender equality and right to work with human dignity. International conventions and norms are to be taken into consideration in the absence of enacted domestic law and when there is no inconsistency between them. The Court stated that:

“It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in domestic law.”

The Court observed that each incident of sexual harassment of women at workplace results in violation of fundamental rights of 'Gender Equality' and the 'Right to life and liberty'. Since neither civil nor penal laws in India provide specific protection to women from sexual harassment in workplaces, the Court laid down the guidelines and norms, for effective enforcement of the basic human right of gender equality.

Later, in order to ensure proper implementation of the guidelines stipulated in Vishaka case an Act entitled the Sexual Harassment of Women at workplace (Prevention , Prohibition and Redressal) Act was enacted in 2013 (No. 14 of 2013) which defines sexual harassment under section 2(n) as it includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely: (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography , or (v) any other unwelcome physical. Verbal or non-verbal conduct of sexual nature.

Indian and CEDAW

India has ratified the Convention on the Elimination of All forms of Discrimination Against women (1979) on July 9, 1993. Ratification of the Convention obliges India to honour the obligations imposed by the convention. In *MadhuKishwar v. State of Bihar*. It was held by the Supreme Court that the Convention on the Elimination of All Forms of Discrimination Against Women is an integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, International Conventions and the Protection of Human Rights Act, to prevent gender- based discrimination and to effectuate right to life including empowerment of economic, Social and cultural rights. Article 2(f) read with Articles 3,14 and 15 of CEDAW embodies concomitant and the Human Rights Act. It is therefore desirable that the enabling legislature is enacted to give legal effect to the Convention so that discrimination against women which exists due to legal, social and cultural traditions is eliminated. Rights provided therein will remain meaningless to a large number of women due to their poverty. Ignorance and illiteracy.

India while ratifying the Convention made two declarations and a reservation. The first declaration reads: With regard to Articles 5(a) and 16 (1) of the CEDAW, the Government of the Republic of India declares that it shall abide by and ensure those provisions with conformity with its policy initiative and consent. The second declaration states declaration states with regard to Article 16(2) of CEDAW, the Government of the Republic of India declares that through in principle it fully supports the principle of compulsory registration of marriage, it is not practicable in a vast country like India with its variety of customs, religions and level of literacy. In additions to the above declaration, India made a reservation by stating that it does not consider settlement of disputes through arbitration.

It is to be noted that although equality of status has been guaranteed to women by the Constitution, it is myth to millions of women as they are the Victims of Various kinds of violence within houses, at work places and in the educational system. They are still the subject of suppression. Tall promises for improving the plight of women were made during 2001 which was declared as 'women's Empowerment Year' but they were far from being fulfilled.

Protection of Women from Domestic Violence Act, 2005.- The Beijing Declaration and the programme of action has regarded domestic violence as a human right issue and serious deterrent to development. In order to provide effective protection of the rights of women who are victims from Domestic Violence Act, 2005 was enacted by the Parliament.

Domestic violence has been defined by the Act under Section 3 as any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it: (a) harms or injures or endanger the health, safety, life, limb or well being , whether mental or Physical , of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or (b) harass, harms, injures or endangers the aggrieved person with a view to coerce her or any other persons related to her to meet any unlawful demand for any dowry or aggrieved person or any person related to her by any conduct mentioned in clause harm, whether physical or mental to the aggrieved person.

Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed , may give information about it to the concerned protection officer. A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence is reported to him, shall inform the aggrieved person (a) of her right to make an application for a custody order, a residence order , a compensation order or more than one such order under this Act; (b) of the availability of services of service providers; (c) of the availability of services of the protection officers; (d) of her right to free legal services under the Legal Services Authority Act, 1987; (e) of her right to file a complaint under Section 498-A of the Indian Penal Code, wherever relevant.

The relief sought may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts domestic violence committed by the respondent. The Magistrate may, after giving the aggrieved person and respondent an opportunity of being heard and on being Prima Facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from (a) Committing any act

of domestic violence; or (b) aiding or abetting in the commission of as of domestic violences: (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person; (d) attempting to communicate in any form , whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact; (e) alienating any assets, operating bank lockers or bank accounts; or (f) causing violence to the dependents and other relatives.

It is to be noted that the Act alone cannot eliminate the discrimination against women. In order to reduce discrimination, we must change the attitude and behavior of men; and this has to start early , in boyhood. Enlightend fathers, husbands and brothers are more likely to respect daughters, wife and sisters.

5.4 DALIT'S RIGHTS, BONDED LABOUR AND WAGES

Forced or compulsory labour constitutes a violation of the rights of man referred to in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights. In order to suppress it, a Convention was concluded for the abolition of Forced Labour which was adopted by the Genber5al conference of the International LabourOrganization on June 25, 1957. The Convention came into force on January 17, 1959.

The convention provided under Article 1 that each member of the International Organization which ratifies this conversation undertakes to suppress and not to make use of any from 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 haying participated in strikes.
- (e) As a means of racial, social. Natural or religious discrimination.

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

support to the State Parties in their effort to eradicate forced labour. ILO's Prevention and Elimination of Bonded Labour in South Asia Project is an example of its efforts.

It is to be noted that the Convention has not been effective to abolish the forced labour. A study conducted by the International Labour Organization in 2001 titled 'stopping forced Labour' reveals that the growth of forced labour worldwide is deeply disturbing. "The emerging picture is one where slavery, oppression and exploitation of society's most vulnerable members – especially women and children – have by no means been consigned to the past. The entire World needs to re-examine its conscience and instigate action to abolish forced labour and the often terrible living and working conditions that accompany it.

Forced Labour in India

India Constitution under Article 23 Para 1 lays down that ' *beggar* and other similar forms of forced labour are prohibited.' The term '*beggar*' may mean labour or service provided by a person without remuneration. Thus, forcing a person to work without remuneration is *beggar*'. Article 23 para 1 prohibit *beggar* and also other similar forms of forced labour, as they affect the dignity of a person. Meaning of the term 'forced labour' has been elaborated by the Supreme Court in *people's Union for Democratic Rights v. Union of India*, by stating that where labour is forced upon a person irrespective of the payment labour shall be deemed as forced labour. If a person he has been forced or compelled to perform work against his wishes, i.e., if he has been forced to do work, it shall be a case of forced labour even if he has received remuneration for the work done. It was observed by the Court that the person may be compelled to do work because of 'physical force' or 'legal force' (i.e., where a person is forced to work because of the provision of the punishment for not providing labour or service) or economic force. If any of the force compels a person to work that will be regarded as 'forced labour' In *Bandhua Mukti Morcha v. Union of India* the supreme Court observed that bonded labour is included within the scope of forced labour and, therefore, it is prohibited under Article 23 of the Constitution.

Article 23 Para,1. Of the Constitution lays down the *beggar* and other similar from of forced labour shall be an offence punishable in a accordance with law. In order

to give effect to it, the Bonded Labour System (Abolition) Act was enacted in 1976 with the amendment in 1987 to abolish the system of bonded; labour. The national Human Rights Commission (NHRC) has been involved in the monitoring of the implementation of the Act as per the order of the Supreme Court dated November 17, 1997, passed in Writ petition (Civil) No. 3922 of 1985. The NHRC has, since then, been monitoring the implementation of the Act.

5.5 REFUGEES

Refugees are migrants in the broader sense of the term, yet they continue to be a distinct category of people. They are referred to that person who have their states in which they have permanent residents to escape persecution or military action. the convention relating to the status of refugees of 1951 defines refugees under Article 1 as under.

Any person who owing to well founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country, or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear is unwilling to return to it.

The above definition lays down that only those person shall be deemed refugees ho have well founded fear of persecution, i.e. who has serious threat to life and liberty. Such persons, are said to be political refuges as opposed to ordinary migrants or economic refugees or those who leave their country for reasons purely for personal convenience. The crucial phrase in the definition is well founded fear of being persecuted which comprises subjective state on the part of the refulees (fear) and objective facts about the country from which the refuges is fleeing (well founded persecuted) although these terms have not been defined by the convention torture discriminations of reface sex, religion, nationality. Language or membership of a particular group and other reasons may be regarded as the cause of persecution. Thus only those persons felling poetical persecution can effectively qualify for refuge status because persecution is a denial of human rights.

It is to be noted that refugee status is granted to a person who is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country. International protectionism not granted to person as long as a person remains within the territorial jurisdiction of his home country. i.e the country of his nationality. Refugee status is granted also to a person without a nationality if he is outside the country of his former habitual residence. It is submitted that a person having nationality or without nationality to granted on the same footing. In the case of stateless refugees., the country of nationality is replaced by the country of his former habitual residence.

Convention on the status of Refugees

The most important international instrument drawn up relating to problems of refugees is the convention relating to the status of refugees of 1951 which was formally adopted on 28th July 1951 after considering that the charter of the united nations and the universal declaration of human rights have affirmed the principle that all human beings shall enjoy fundamental rights and freedom without discrimination. the convention came into force on April 22, 1954, As on June 15, 2000, the convention had 136 state parties.

The convention applied according to para 2 of Article 1 only to those persons who had become refugees before January 1, 1951. In order to widen the scope of the Convention a Protocol Relating to the Status of Refugees was concluded in 1967 which under Para 2 of Article 11 omitted the expression "as a result of events occurring before January 1, 1951" and add the words "as a result of such events". Legal status of refugees has been defined in the above two international treaties. They also defined the rights and duties of refugees and made provisions for various aspects of their everyday lives, including the right to work, education, public assistance and social security and their right to travel documents. The Convention of 1951 are as follows:

(1) Personal Status of Refugees.- The Personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. Rights acquired by a refugee and his dependent on personal status, more particularly rights attaching to marriage, shall be respected by

Contracting Parties. However, it is subject to compliance , if this be necessary , with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a would have been recognized by the law of that State had he not become a refugee.

(2) Movable and Immovable Property.-The Contracting states shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to ailend generally in the same circumstances, as regards the acquisition of movable and to leases and other contracts relating to movable and immovable property.

(3) Civil Rights.- The Convention stated that the Contracting States shall provide minimum rights to refugees, such as right to work, right to education and social security, freedom and access to courts without discrimination on the basis of race, religion or country of origin.

(4) Treatment of Refugees.- Chapter IIV of the Convention comprising from Articles 20 to 33 laid sown regarding the 'welfare' of the refugees. Refugees are required to be treated by the State Parties as their own nationals on many aspects. For instance, where the rationing system exists for the distribution of products in short supply, refugees shall be accorded the same treatment as nationals. The Contracting State shall accord of refugees the same treatment as is accorded to nationals with respect to elementary education, public relief and assistance, labour legislation and social security.

Each contracting State shall accord to refugees the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances. The Contracting states shall not impose upon refugees duties, charges or taxes of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situation.

(5) Illegal Entry of Refugees.- The Contracting States shall not impose penalties on those refugees who have illegally entered into their territories without authorization from a territory where their life or freedom was threatened provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Para 2 of Article 31 provides that the Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such

restrictions shall only be applied until their status in the country is regularized or they obtain admission in another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain permission into another country.

(6) Expulsion of Refugees.- The Convention under Article 32 provides that the contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. Para 2 of the above article lays down that the expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. The Parties shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

(7) Travel document.- The Convention under Article 28 laid down that the Contracting States shall issue to refugee lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require. The Contracting States may issue such a travel document to any other refugee in their territory: they shall in Particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

(8) General Obligations.- The Convention under Article 2 lays down that every refugee has duties to the country in which he finds himself, which require in Particular that he conforms to its laws and regulations as well as to measures taken for the maintenance of public order.

(9) Prohibition of Expulsion or Return (refoulement).- The Convention under Article 33 states that no Contracting States shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Thus, the Principle of non-refoulement prohibits rejection of refugee at frontier and expulsion of entry. The principle of refoulement is required to be followed by the States in order to prevent human rights violations.

However, Para 2 of the above Article provides that a refugee cannot claim this benefit against whom there are reasonable grounds for regarding as a danger to the security of the country or who has been convicted for a serious crime and constitutes a danger to the community of that country.

(10) Access to Courts.- That is the country of nationality or the country of former habitual residence in case a refugee is stateless and secondly, through the fundamental changes in the objective circumstances in the country of origin upon which refugee status was based. The latter is commonly referred to as the ceased circumstances or general cessation clauses.

The decision of the Supreme Court given in *National Human Rights Commission v. State of Arunachal Pradesh*. Is relevant regarding the protection of some of the rights to refugees and is worth mentioning. In the above case it was pointed out that a large number of Chakmas from erstwhile East Pakistan (now Bangladesh) were displaced by the KaptaiHydel power settled in these States and became Indian citizens in due course of time. Since a large number of refugees had taken shelter in Assam, the State Government expressed its inability to rehabilitate all of them. However, about 4012 Chakmas were settled in Arunachal Pradesh. They were also allotted some land in consultation with local tribals. The Government of India also sanctioned rehabilitation assistance @ Rs. 4,200/- per family. The population of Chakmas in Arunachal Pradesh was estimated to be around 65,000. Later, relations between citizens of Arunachal Pradesh and the Chakmas have deteriorated and the latter have made a complaint that they are being subjected to repressive measures with a view to forcibly expelling them from the State of Arunachal Pradesh.

The Committee for Citizenship Rights of the Chakmas (CCRC) filed a representation with the National Human Rights Commission (NHRC) complaining of the persecution of Chakmas. NHRC after having doubted that its own efforts would be insufficient to sustain the Chakmas in their own habitat decided to bring the matter before the Supreme Court.

The Supreme Court observed that the settlement of Chakmas in large number in Arunachal Pradesh shall disturb its ethnic balance and destroy its culture and identity. The Special provisions made in the Constitution would be set at naught if the States

tribals population is allowed to be invaded by people from out side. The triblas therefore consider Chakmas as a potential threat to their tradition and culture and are , therefore keen that the latter do not entrench themselves in the State. However , the Court stated that there exists a clear and present danger to the lives and personal liberty of the Chakmas in view of the Prevailing conditions in the State of Arunchal Pradesh.

The Court stated “We are a country governed by the rule of law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws (Article 14). So also, no persons can be deprived of his life or personsla liberty except according to procedure established by law. (Article 21). Thus the State is bound to protect the life and liberty of every human being , be a citizen or otherwise, and it cannot permit anybody or group of persons,..... To threaten the Chakmas to leave the State.....”. The Court also laid down certain guidelines with regard to the Chakma refugees living in Arunchal Pradesh. Specific directions were issued to the State Government to the effect that the State shall ensure that the life and personal liberty of each and every Chakma residing within the state shall be protected and any attempt to forcibly evict or drive them out of the State..... Shall be repelled, if necessary by requisitioning the service of Para- military or police force. Further, except in accordance with alaw, Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein.

The above decision of the Supreme Court has been hailed as a landmark judgement in respect of safeguarding fundamental Constituional rights of foreigners including refugees.

Nastional Human Rights Commission (NHRC) established by the protection of Human Risghts Act of 1993 can also play an active role in protecting human rights of refugees. The Commission is competent to investigate suomotu or on the basis of petition, the violation of human rights of any person. Specific interventions have been made by the Commission relating to the protection of Chakma refugees who have sought refuge in the North- Eastern States of India and Tripura. The Commission has also effectively intervned in cases of illegal detention of Sri Lankan refugees in the State of Tamil Nadu.

International Protection of Refugees. - The main instruments for the International Protection of Refugees are the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Convention on the Status of Refugees, 1951 entered into force on April 22, 1954. So far the convention has been signed by 147 countries and has been ratified by 140 countries. However, India has not become a party to the convention. In addition to these, there is a U.N. High Commissioner for Refugees (U.N.HCR) established on January 1, 1961 to give legal protection to the refugees and to provide them with material assistance.

The Convention on the Status of Refugees, 1951 is based on two principles – (i) non- discrimination as far as possible between national and refugees; and (ii) no discrimination based on race, religion or country or origin amongst refugees. It may be noted that Article 31 of the 1951 U.N. Convention on status of Refugees exempts refugees directly from a country or persecution from punishment on account of their illegal entry or presence Provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Further, the contracting state parties shall not apply to the movements of such refugees' restriction other than those which are necessary and that such restricting shall only be applied until their status is regularized or they obtain admission into another country. According to Article 2 of the convention refugees should respect the laws and regulations of their host country and refrain from activities which are inconsistent with refugee status. Reference may also be made to the principle of non- refoulement incorporated in the convention. This principle is fundamental to the entire structure of international action in favour of refugees. The observance of this principle is closely related to the determination of refugee status. The corollary to the principle of non-refoulement is that the repatriation of refugees must be voluntary.

U.N. Commission on Refugees was formed on 14th December, 1950, also known as U.N. Refugee Agency is mandated to protect and support refugees at the request of a Government or the United Nations itself and assist in their voluntary repatriation, local integration or resettlement to a third country. Its Headquarter are in Geneva, Switzerland and is a member of U.N. Development Group.

The United Nations High Commissioner has won two Nobel Peace Prizes in 1954 and again in 1981.

A UNHCR Panel in Geneva on 11 April 1984 expressed concern about xenophobic attitudes toward refugees and appealed to the public, the media and Government to combat xenophobic trends and to treat refugees according to the re-recognised humanitarian standards. Besides this, since 1985, UNHCR had launched the U.N. campaign to break down mounting barriers erected against the tide of refugees worldwide and to treat refugees as assets.

The U.N. High Commissioner for Refugees (UNHCR) protects and supports refugees at the request of a government or UN and assists at their return or resettlement. The UNHCR was awarded the Nobel Peace Prize for 1954 and 1981.

The responsibilities of the High Commission would include:

- (i) strengthening and streamlining existing human rights mechanisms;
- (ii) engaging in dialogue with all government to secure respect for all human rights;
- (iii) coordinating human rights promotion as protection activities throughout the U.N. system including UN education and public information programmes;
- (iv) supervising the centre for Human Rights;
- (v) to promote and protect the effective enjoyment by all of civil cultural, economic , political and social rights;
- (vi) to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human right;
- (vii) to provide advisory services technical and financial assistance in respect of the human rights to states at their request ;and
- (viii) to take steps for the enhancement of international cooperation for the promotion and protection of human rights;

U.N High Commissioner on Refugees (UNHCR) mandate has gradually been expanded to include protecting and providing humanitarian assistance to whom it describes as other persons of 'of concern', including internationally displaced person (IDPs) who set the legal definition of a refugee under the 1951 U.N. Convention relating to the Status of Refugees and 1967 protocol , t5he 1969 organisation for African Unity Convention , or

some other treaty , if they left their country, but also presently remain in their country of origin .

Since 1951, UNHCR has helped over 50 million refugees to restart their lives. Twice awarded for Nobel Peace prize, UNHCR cares for more than 20 millions of the world most vulnerable people in 116 countries, ensuring that they are protected and have access to food, shelter, clean water, medical care and education.

Legal status of Refugees in India. - Though India has not become a party to the Convention Relating to the Status of Refugees, 1951 yet the two basic principles of the convention namely (i) non- discrimination as far as possible between national and refugees, and (ii) no discrimination based on race, religion or country or origin amongst refugees. This conclusion is based on the provisions of Part III of the Constitution. Once the refugee is lawfully in India he or she gets several protections enshrined in part III of the Constitution. Article 14 provides that the state shall not deny to any person equality before the law or the equal protection of law within the territory of India. Further, Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Besides this, Article provides protection against arrest and detention in certain cases. Moreover, Article 25 (1) provides that subject to public order, morality and health to others provisions of Part III provides that all persons are equally to freedom of conscience and the right to freely profess, practice and propagate religion.

A glaring example of refugees living with honour is that of Dalai Lama and his Tibetan followers. Being oppressed from the repressive policies of China, Dalai Lama and some of his followers fled away from Tibet and sought political refuge in India. India granted asylum to Dalai Lama and his followers. It was an indication of territorial sovereignty of India. China resented it and made a great hue and cry over it and alleged that India was in accordance with the principle of territorial asylum, India as a sovereign state was within her right to grant asylum to asylum , India as a sovereign state was within her right to grant asylum to Dalai Lama and his followers . As remarked by Hall, " A state being in liberty to do whatever it chooses within its territory without reference to the wishes of other states ,so long as the acts are not directly injurious to them , it has the right of receiving and giving hospitality of asylum to emigrants or

refugees , whether or not the farmer have violated the laws of their country in having violated the laws of their country in leaving it and whether the latter are accused of political or of ordinary crimes.”

Yet another example of refugees coming to India was of the influx of refugees from Bangladesh. In this case, Article 14 (2) of the Universal Declaration of Human Rights did not apply because the influx of reflux of refugees from Bangladesh was due to political crimes and the refugees concerned were not guilty of violating the purposes and principles of the United Nations. Rather the Military Regime of Pakistan was guilty of violating the purposes and principles of the United Nations.

5.6 CAPITAL PUNISHMENT

It is a violation of human rights – the right to life and the right not to be subjected to cruel, inhuman or degrading treatment. Further, the execution of death sentence is again an act of torture. It constitutes an extreme physical and mental assault on a person already rendered helpless by the government authorities.

The first attempt by the International community for abolishing the death penalty, or simply minimizing its use was made in 1948 with the adoption of the Universal Declaration of Human Rights which stated under Article 3 that everyone has the rights to life’, Although the Declaration being a resolution of the General Assembly was not binding on States, many states abolished the death penalty either in law or in practice. Later, the International Covenant on Civil and Political Rights was adopted which stated under Article 6 para 2 that in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes. Abolition of death sentence is required as it is one of the measures for the enjoyment of the right to life. With the efforts of the General Assembly and the Commission on Human Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights was concluded in 1987 by which State Parties to the Covenant. If they so desired, they could take on the additional obligation the death penalty. The Second Protocol was adopted because many State Parties believed that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights. The

Protocol came into force on July 11, 1991. As on May 4, 2014, the Protocol had 81 State Parties.

The Second Protocol under Article 1 Para 1 stated that no one within the jurisdiction of a State Party to the present Protocol shall be executed. Para 2 of the above Article provided that each party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Further, a number of resolutions adopted by the General Assembly, the Economic and Social Council and the commission on Human Rights also provided for abolishing the Death Penalty . A few regional conventions on Human Rights also abolished the death sentence. Protocol No. 6 the European Convention for the protection of Human rights and Fundamental Freedoms Concerning the Abolition of the death Penalty signed on April 28, 1983 abolished the death sentence. Similarly, in 1990, a Protocol to the American Convention on Human Rights to Abolish the Death Penalty was concluded which provided under Article I that the State Parties to this Protocol shall not apply to death penalty in their territory to any person subject to their jurisdictions.

Capital punishment is considered as inhuman, medieval form of punishment and unworthy of modern societies. But many cultures throughout the ages have used it for grave offences ranging from theft to murder. Second Optional Protocol was adopted to abolish death penalty. But by the end of 2011 twenty States have still retained the right to exercise the death penalty.

5.7 FUNDAMENTAL RIGHTS IN THE INDIAN CONSTITUTIONS

In India, attempts have been made since the enactment of the Constitution of India, 1950, which was enforced on 26th January, 1951. The Constitution is now the basic law of the country and any law repugnant to or inconsistent with its provisions has been declares to be null and void and not enforceable thenceforth. Article 14 of the Constitution grants a right of equality before law and equal protection before law to all persons of India or even of a foreign land. Article 15|prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It provides that the State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them be subject to disability, liability, restriction nor condition with regard to-

Access to shops, public restaurants, hotels, and places of public entertainment; or Use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of the State funds or dedicated to the use of general public.

But nothing in this Article shall prevent the State from making any special provision for women and children. Besides it, nothing in this Article or Article 29(2) shall prevent the State from making any special provision for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Article 16 provides for equality of opportunity in matters of public employment, that there shall be equality of opportunity of all citizens in matters relating to employment or appointment to any office under the State and that no citizen shall only on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

Article 23 prohibits traffic in human beings and forced labour, that traffic inhuman beings and beggar and other similar forms of forced labour is prohibited and any contravention of this provision shall be an offence punishable in accordance with law. But nothing in this Article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24 prohibits employment of children in factories, etc. that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Articles 25 lays down freedom of conscience and free professions, practice and propagation of religion, that subject to public order, morality and health to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess practise and propagate religion.

5.8 DIRECTIVE PRINCIPLES OF STATE POLICY –

Article 39 enumerates certain principles of policy to be followed by the States, that the State shall, in particular, direct its policy towards securing-(a) that the citizens, men and women equally have the right to an adequate means of livelihood, (b) that the ownership and control of the material resources of the community are so distributed as best to sub

serve the common good,(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; (d) that there equal pay for equal work for both men and women; (e) that the health and the strength of workers, men and women, and the children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

5.9 FUNDAMENTAL DUTIES

Article 51-A conceives of fundamental duties of citizens qua Human Rights that it shall be the duty of every citizen of India.....(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women; (f) to value and preserve the right heritage of our composite culture; (g) to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures; (h) to develop the temper, humanism and the spirit of inquiry and reform; (i) to safeguard public property and to abjure violence; (j) to strive towards excellence in all spheres of individuals and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

5.10 NATIONAL HUMAN RIGHTS COMMISSION.

In early 1990s India felt the need of establishing a Commission as a positive response to the criticism of the foreign Governments in the context of political unrest and violence in Punjab, Jammu & Kashmir North- East and Andhra Pradesh, In addition to the pressure from the foreign countries pressure was added from the domestic front as well for the creation of a National Human Rights Commission, because of the awareness among the people for the protection of human rights.

PROTECTION OF HUMAN RIGHTS ACT

The Human Rights Commissions Bill was introduced in the Lok Sabha on May 14 1992. The Bill became an Act after it received the assent of the President on January 8, 1994 which is known as the Protection of Human Rights Act. The purpose of the enactment is

laid in the Preamble of the Act i.e to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of Human Rights and for matter connected therewith or incidental thereto.

National Human Right Commission

Constitution- The National Human Rights Commission is constituted by the Central Government to exercise the powers conferred upon, and to perform the functions assigned to it under the Act.11 the Commission consists of –

a Chairperson who has been the Chief justice of the Supreme Court;

one Member, who is , or has been , the Judge of the Supreme Court;

one Member , who is , or has been , the Judge of the Supreme Court;

two Members to be appointed amongst persons having knowledge of , or practical experience in , matters relating to human rights,12]

Besides these, the Chairpersons of National Commission for Minorities; the national Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for Woman shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12. 13

The Act also makes provision for a Secretary – General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission as it may delegate to him. 14

As pointed out by the Supreme Court in *ParamajitKaur v. State of Punjab*, 15 the Chairman of the Commission in his capacity as a Judge of the High Court and also two other members who have held high Judicial offices as Chief justice of High Courts, have throughout their tenure, considered, expounded and Enforced the Fundamental Rights and are, in their own way, experts in the field. The Commission is truly an expert body to which a reference can be made by prohibition under the Protection of Human Rights Act will affect the Supreme Court.

Headquarters of the Commission. – The headquarters of the National Human Rights Commission (NHRC) is located at Delhi. The Commission may, however, with the previous approval of the Central Government establish office at other places in India. 16

Appointment of Chairperson and other Members.- The Chairperson and other Members are appointed by the President by warrant under his hand and seal after obtaining the recommendations of committee consisting of –

Prime Minister- Chairperson

Speaker of the House of People- Member

Minister in Charge of Ministry of Home Affairs in the Government of India – member

Leader of the Opposition in the House of t5he people – Member

Leader of the Opposition en the Council of State – Member

Deputy Chairman of the Council of States- Member

A sitting judge of the Supreme Court or sitting Chief Justice of a high Court can be appointed only after consultation with the Chief Justice of India .20

It is further provided that no appointment of a Chairperson or a Member shall be invalid by reason of any vacancy in the above Committee headed by the Prime Minister.21

Term of office of Members. – A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is eaters. 22 A person appointed as a Member shall also hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re- appointment for another term of five years .This is however, subject to the condition that no Member shall hold office after he has attained the age of seventy years.23

Removal of a Member of the Commission. - Sub-section (1) of Section 5 (1) provides that the chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office . The Chairperson or any other Member of the Commission can be removed from his office by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such other Member, as the cast may be, ought on any such ground be removed. 25 But despite this provision or notwithstanding this provision the President may by order remove from office the chairperson or any other Member if the chairperson or such other person , as the case may be –

is adjudged an insolvent ; or

engages during his term of office in any paid employment outside the duties of his office

; or

is unfit to continue in office by reason of infirmity of mind or body; or

is of unsound mind and stands so declares by a competent Court; or

is convicted and sent to imprisonment for an offence which in the opinion of the President involves moral turpitude. 26

In the above cases, it will not be necessary for the President to refer the matter to the Supreme Court and obtain its report before ordering the removal of a Chairperson or a Member.

Article 13 (2) of the Universal Declaration of Human Rights (1948) provides:

Everyone has the right to leave any country including his own, and to return to his country.

Besides this, Article 14 provides:

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Further, Article 12 (2) of the international Covenant on Civil and Political Rights, 1966 provides that everyone shall be free to leave any country, including his own. Article 12 (3) adds that this right shall not be subject to any restriction except those are necessary to protect national security , public order, public health or morals or the rights and freedoms of others , and are consistent with the other rights recognized in the present covenant.

The Act set up National Human Rights Commission and the State Human Rights Commissions in the States and the Human Rights Courts in the districts.

Functions of the Commission

The functions of the Commission are laid down under Diction 12 of the Act which are as follows-

The Commission shall inquire *suomotu* or on a petition presented to it by a victim or any person or any person on his behalf, into complaints of (a) violation of human rights or abatement thereof: or (b) negligence in the prevention of such violation by a public servant.

The Commission took *suomotu* cognizance of the communal disturbances in Gujrat commencing with the Godhara tragedy on February 27.2002 and its aftermath.

The Commission may intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

The Commission shall visit, under intimation to the State Government, any jail or any other institution under the control of the State Government. Where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon.

The Commission shall review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and will recommend measures for their effective implementation.

The commission shall review the factors, including acts of terrorism that inhabit exercise of one's human rights as well as the safeguards currently in force and make appropriate recommendation.

The Commission shall study the treaties and other international instruments on human rights and make recommendations for their effective implementation.

The Commission w2ill undertake and promote research in the field of human rights.

The Commission shall spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.

The Commission shall encourage the efforts of non- governmental organizations and institutions working in the field of human rights.

The Commission may perform any other function as it may consider necessary for the promotion of human rights.

The Commission shall submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it shall not be deferred till submission of the annual report. The Central Government and the State Government shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations. If any.

The Commission shall perform functions pursuant to the directions issued by the Supreme Court in exercise of the jurisdiction under Article 32 of the Constitution. The Supreme Court in *Paramjitkaur v. State of Punjab*. Stated that the Commission would function pursuant to the direction issued by this Court and not under the Act under which it is constituted. In deciding the matters referred by this Court. National Human Rights Commission is given a free hand and is not circumscribed by any conditions. Therefore, the jurisdiction exercised by the National Human Rights Commission in these matters is of a special nature not covered by enactment or law, and thus acts *sui generis*,

Powers of Commission

The Commission exercises the following powers while inquiring into the complaints of violations of human rights:-

The Commission while inquiring into complaints shall have all the powers of a Civil Court trying a suit under the code of Civil Procedure of 1908, and in particular in

respect of the following matters: (a) summoning and enforcing the attendance of witnesses and examining them on oath: (b) discovery and production of any document: (c) receiving evidence on affidavits; (d) requisitioning any public record or copy thereof from any Court or Office: (e) issuing commissions for the examination of witnesses or documents: (f) any other matter which may be prescribed.

The Commission shall have power to require any person to furnish information on such points or matters as, in the opinion of the Commission may be useful for, or relevant to the subject matter of the inquiry and any person so required shall be deemed to be

legally bound furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code.

The Commission or any other officer, not below the rank of Gazetted officer, specially authorized in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document overtake extracts or copies therefore.

The Commission is though empowered to exercise the power of a civil court only during the course of inquiry with complaints it can also record the facts constituting the offence and the statement of an accused person as is described in section 175, 178, 179, 180 or 228 to the I.P.C. The Commission after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1973 has to forward the case to a Magistrate jurisdiction to conduct the trial. The magistrate to whom any such case is forwarded shall proceed to hear the complaints against the accused as if the case has been forwarded to him under Section 346 of the Code of Criminal Procedure. 1973.

The Commission may, after completing the inquiry, recommend to the appropriate Government or authority to take action against the person concerned where the inquiry discloses the violation of human rights. It may also recommend the appropriate Government or authority for grant of necessary interim relief to the victim or his family members. The Commission may approach the Supreme Court or the concerned High Court to pass such directions, orders or writs as that Court may deem necessary. The Commission provides copy of the inquiry reports to the petitioner or his representative. It shall also send a copy of its inquiry report together with its recommendation to the concerned Government or authority who shall, within a month forward to the Commission its comments on the report including the action taken or proposed to be taken.

The commission shall publish its inquiry report together with the comments of the concerned Government or authority. If any, and the action taken or proposed to be taken by the appropriate authority on the recommendations of the commission control of the Commission. Further, the Commission may (a) summon and enforce the attendance of

any person and examine him: (b) require such person to discover or produce any document before it: (c) requisition of any public record or copy there from any office.

Evaluation of the protection of Human Rights Act

It is true that no national institution or human rights commission, howsoever effective it might be, can provide food, shelter, clothing, education and health facilities to the wanting millions. It is duty of the Government to provide these basic rights which are essential for the promotion of human dignity. What the Commission is required to do is to develop a culture of human rights. A culture of human rights can be achieved by making people aware of their rights. This can be done by a variety of means which include (a) to ensure access to free primary education for all children. Boys and girls without discrimination, about what human rights are; (b) to organize and facilitate training activities, including courses of seminars on international norms prohibiting violations of human rights and their applicability in domestic law, as well as on their international human rights obligations for prosecutors, members of the judiciary and other public officials; (c) to strengthen the human rights training and awareness-raising activities designed for personnel of the armed forces, para military forces and administrative officers; (d) to ensure initial training and during service from time to time to the police and jail authorities their quality as protection of human rights depends much upon their awareness. (e) to ensure that the human rights education being a district subject of study made compulsory in the pre-university and the graduate of the universities.

The Commission required (a) to encourage the private sector to promote human rights by the media, including the print and electronic media, the Internet and advertising: (b) to increase the use of the new information and communication technologies, including the Internet to create educational and awareness-raising networks against the violations of human rights.

Procedure for dealing with complaints .- Regulation 8 of the National Human Rights Commission (Procedure) Regulations, 1994⁶⁵ lays down the following procedure for dealing with complaints of alleged violation of 'human rights' :-

All complaints in whatever form received by the Commission shall be registered and assigned a number and placed for admission before a Bench of two Members

constituted for the purpose not later than two weeks of receipt thereof. Ordinarily, complaints of the following nature are not entertainable by the Commission :

in regard to events which appended more than one year before the making of complaints

,⁶⁶

With regard to matters which are sub- judice ;

Which are vague , anonymous of pseudonymous ;

Which are frivolous nature ;or

Those which are outside the purview of the Commission.

No fee chargeable on complaints

Every attempt should be made to disclose a complete picture of the matter leading to the complaint and the same may be made in English or Hindi to enable the Commission to take immediate action. To facilitate the filing of the complaints, to Commission the Commission shall however, entertain complaints in any language included in Eighth Schedule of the Constitution. It shall be open to the Commission to ask for further information and affidavits to be filed in support of allegations whenever considered necessary.

The Commission may, in its discretion, accept telegraphic complaints and complaints conveyed through Fax.

The Commission shall have the power to dismiss a complaint *in limine*.

Upon admission of a complaint the Chairperson /Commission shall direct whether the matter would be set down for enquiry by it or should be investigated into.

On every complaint on which a decision is taken by the Chairperson /Commission to .either hold an inquiry or investigation, the Secretariat shall call for report / comments from the concerned Government /authority giving the latter a reasonable time therefore.

On receipt of the comments of the concerned authority, a detailed note on the merits of the case shall prepare for consideration of the commission.

The directions and recommendations of the Commission shall be communicated to the concerned Government /authority and the petitioner as provided for the Sections 18 and 19 of the Act.

The Commission may ,in its discretion afford a personal hearing to the petitioner or any other person on his behalf and such other person or person as in the opinion of the Commission should be heard, for appropriate disposal of the matter before it and , where necessary call for records and examine witness in connection with it. The Commission shall afford a reasonable hearing, including opportunity of cross-examining witnesses ,if any , in support of the complaint and leading of evidence in support of this stand to person whose conduct is enquired into by it or where in its opinion the reputation of such person is likely to be prejudicially affected .

Where investigation is undertaken by the team of the Commission or by any other person under its direction, the report shall be submitted within a week of its completion or such further time as the Commission may allow. The Commission may, in its discretion, direct further investigation a given case if it is of the opinion that investigation has not been proper or the matter requires further investigation for ascertaining the truth or enabling it to property parlance is also called the abuse of power or use of muscle power. To further clarify this position , it must be noted that the authorities have treated the landowner as a subject of medieval India , but not as a 'citizen' under the Constitution.

Lastly, depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare state, statutory authorities are bound, not only to pay compensation but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfillment of their obligations would tantamount to national to forcing the said uprooted presorts to become vagabonds or to indulge in anti-national activates as such sentiments would be borne to them on account of such ill-treatment . Therefore, it is not permissible /human rights, under the grab of \ industrials development.

However, it may be noted that human rights are rights of human concerning to their life, liberty, equality and dignity. The term 'human right' would therefore not apply to by Bombay High Court in Maharashtra Housing and Development Authority v. Maharashtra State Human Rights Commission.

As regards right to employment or work the Supreme Court observed in Air India statutory Corporation v. United Labour Union that right to employment in the absence of suitable legislation cannot be placed in same footing as right to livelihood . Further the right to work become as much fundamental right as right to life that would be once a person is appointed.

Following the above decision, the Bombay High Court in State of Maharashtra v. San SobhaVithalKolte held that the right to work as fundamental right can only be considered as fundamental right in those cases where there is a legislative guarantee in the form of legislation. In the absence of right to work being fundamental right , it would not fall within expression 'life' under Article 21 and if so would not fall within the definition of Human Rights as set out under Section 2 (d) of the Act. It may be noted here that 'human rights' are rights of human relating to their life, liberty, equality and dignity. The said term would not apply to individual rights of parties even against state arising under contract.

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QUESTIONS

UNIT – V

MSW/P-24 (HR)

Long Type - (Within 1000 words)

1. Discuss the major initiatives taken by the General Assembly of United Nations for the protection of the Rights of the Child.
2. Write a critical note on the United Nations Convention on the Elimination of all forms of Discrimination against Women (CEDAW) 1979.
3. Who is a Refugee? Discuss the important provisions relating to Refugees under United Nations Convention on Status of Refugees, 1951.
4. What is the relation between Fundamental Rights and Human Rights ? Whether all the Human Rights protected under United Nations Charter are treated as Fundamental Rights under the Indian Constitution? Comment.
5. Discuss the composition power and function of National Human Rights Commission of India.

Short Type - (Within 300 words)

Write Short Notes on –

1. Human Rights of the Child
2. World Conference on Women 1995
3. Sexual Harassment of Women at Work Place
4. Domestic Violence Act - 2005
5. Bonded Labour
6. Rights of the Refugees
7. Fundamental Duties
8. Directive Principles of State Policy and Human Rights
9. Capital Punishment and Human Rights
10. National Human Rights Commission