

Section-I

Conceptual Foundations of Human Rights



Human Rights are inscribed in the hearts of People; they were there long before lawmakers drafted their first proclamation.

What are Human Rights?

Human beings are born equal in dignity and rights. These rights are moral claims, which are inalienable and inherent in all human beings. The universality of Human Rights simply means that all human beings, by virtue of their being human, have the same rights everywhere all the times. A human being from one part of the world does not have any less right than another from a different part of the world.

Cranston (1973) defines Human Rights as

“Moral rights which all men everywhere at all times ought to have and something which no one maybe deprived of without grave affront to justice; something which is owed to every human being simply because he is human.

Wasserstrom (1964) outlines the four characteristics which a human right must have:

First it must be possessed by all human beings, as well as only by human beings. Second, equally by all human beings. Third, all human beings possess human Rights, we can rule out as possible candidates any of those rights which one might have by virtue of occupying any particular status or relationship, such as that of parent, president, or promisee. And fourth, if there are any Human Rights, they have the additional characteristic of being assertable, in a manner of speaking, “against the whole world.”

Stark (1989) sees Human Rights as

“Internationally recognized norms for behavior of states and other persons in international law”.

Buergenthal (1988) defines Human Rights by reference to the law as

“The law, which deals with the protection of individuals and groups against violation by governments”.

Historical Background

The struggle for Human Rights is as old as history itself. Even a cursory look at other cultures and traditions suggests that the need to protect individuals against the abuse of power by the monarch, tyrant or state has been a matter of concern even in the past. The concept of Human Rights can be found in the works of Prophets, sages, philosophers, from different countries and faiths. Cyrus the great, some 2000 years back, recognized & protected, what are now called the right to liberty & security, freedom of movement, right to property & even certain economic & social rights.

According to some Human Rights scholars the early traces of the concept could be found in Stoic philosophy of classical times as embodied in the natural law jurisprudence/ theories of Grotius & the Jus Naturale of the Roman law. In the later age, philosophers like Bodin and John Locke once again revived such ideas. Both writers were of the view that limitations / restrictions should be

placed on the powers of the sovereign as the sovereign was bound by Natural law which in turn gives way to Natural Rights. In the eighteenth and nineteenth centuries, in Europe, several philosophers evolved the concept of “natural rights”, rights belonging to a person by nature and because of his being human, not by virtue of his citizenship in a particular country or membership in a particular religious or ethnic group. This concept was vigorously debated and rejected by some philosophers as baseless. Others saw it as a formulation of the underlying principle on which all ideas of citizens’ rights and political and religious liberty were based.

However, the modern concept of Human Rights has its foundation in the English, French & American Revolutions of the 17th & 18th centuries. It was the liberal democratic tradition of Western Europe, a tradition itself the product of Greek philosophy, Roman Law, the Judaeo-Christian tradition, the Humanism of the Reformation and Age of Reason, which gave birth to the concept of Human Rights¹.

English Revolution

In England, the Magna Carta of 1215 was considered to be the first document dealing with the rights and liberties of the English citizens to some extent². Later on, after the glorious English revolution of 1688, the “Bill of Rights” was passed in 1689. It was the outcome of the 17th century struggle of Parliament against the arbitrary rule of the Stuart Monarchs³.

The English Bill of Rights provided for the supremacy of the Parliament, freedom of speech, freedom from cruel and unusual punishment, right to fair and free elections etc.

French Revolution

The main theme of the French Revolution was the establishment of new democratic order by demolishing the old authoritarian system of government and propagation of the idea that sovereignty of a nation lay with the people. The Social Contract and Natural Rights theories of Locke and French philosopher Montesquie and Rousseau were also reflected in it⁴.

The French Declaration of Rights of Man and Citizen 1789 claimed “true happiness is to be found in individual liberty that is the product of natural, unalienable and sacred rights of man”.

American Revolution

Inspired by the English revolution and political philosophies of Lock and Montesquie, the colonies of North America sought independence from British Rule and the American founding fathers like Thomas Jefferson drafted “the American Declaration of Independence 1776”⁵. The Declaration

¹ Theodar Meron “International Dimensions of Human Rights”

² Magna Carta was a compromise on the distribution of power between King John and his nobles. However, the language used later on assumed a wider significance because it guaranteed to the citizen’s freedom from imprisonment, right to fair trial, freedom from exile and prosecution etc. Its importance can be judged from the fact that it was confirmed and re-issued by the later sovereign’s in succeeding centuries.

³ Passed after the abdication of James II and accession to the throne of William the 2nd and Mary the 2nd.

⁴ Ibid p4.

⁵ Robertson and Merills.

proclaimed equality before law, right to life, liberty and pursuit of happiness. These high sounding ideals were sufficient for declaration but were inadequate as a catalogue of individual rights, therefore, the Declaration of independence was followed by “ Virginia Declaration of Rights” drafted by George Mason and it included specific liberties e.g. freedom of press, freedom of religion, independence of judiciary, freedom from taxation without consent etc.⁶

Later on, in 1791 the US adopted “Bill of Rights” which contained a list of individual rights. Following the “Bill of Rights” a number of constitutional amendments were made to the US Constitution and freedom of press, religion, right to assembly and freedom of expression etc. were made part of the US Constitution.

In this way the US Constitution became a model for the revolutionary struggle especially in France and the US experience directly influenced the French Revolution.⁷

In summation it can be said that the English, French and American Revolutions in their own way contributed towards the development of forms of liberal democracy. The aim of these revolutions was to protect individual liberty and also these revolutions laid down the foundations of Human Rights law.⁸

Other Factors responsible before the 2nd World War

The middle and late 19th century saw a number of issues take center stage, many of those issues would be considered as Human Rights issues in the 21st century. They included slavery, serfdom, brutal working conditions, low wages, child labor, and, in the Americas the “Indian Problem”, as it was known at that time. In the United States, a bloody war over slavery came close to destroying a country founded only eighty years earlier on the premise that, “all men are created equal”. Russia freed its serfs the year that war began. Neither the emancipated American slaves nor the freed Russian serfs saw any real degree of freedom or basic rights for many more decades.

The development of International Humanitarian Law for the treatment of sick and wounded soldiers and prisoners of war and protection of Minorities took place after the frontiers were redrawn in the aftermath of World War I under Peace settlement of 1919.⁹

The establishment of International Labour Organisation after the 1st World War in early 20th century was another effort in this regard as it aimed at protecting industrial workers from gross exploitation and to improve their working conditions. The League of Nations, an international organization established after the 1st World War to provide a system of ensuring peace & security & facilitating international co-operation, made no provision for protection of Human Rights.

⁶ Davidson Scott “Human Rights”, Buchingham, Open University Press 1993.p3.

⁷ Ibid p4.

⁸ All rights are by nature inherent, universal and inalienable and can be protected within a democratic framework. Davidson Scott. p5.

⁹ The racial, religious, linguistic minorities under the redrawn frontiers were guaranteed rights of similar treatment and same rights as other nationals in the states. A procedure was also formulated, for the minorities to petition to League of Nations for violation of such rights though they had no standing before the Council or the Court of International Justice.

The Covenant of League of Nations obliged the member states to work towards certain humanitarian objectives e.g. establishing humane working conditions for individuals, prohibition of traffic in women and children and above all the establishment of Mandate system that required the mandatory powers to guarantee certain rights to the people of ex-enemy Colonies.

Islamic Concept of Human Rights

As mentioned earlier the idea of Human Rights existed since ancient times. Many countries, cultures and religions have contributed to its basic aim i.e. giving protection, dignity (to the people specially the weak and the poor) and ensuring freedom from tyranny, injustice and exploitation by the powerful. Islam being a code of life has laid down Huqooq Allah (Rights of Allah) that suggest (mode of worshipping Allah) and Huqooq Ullbad i.e. Human Rights, which are equally important pillars sustaining the edifice of Islam.

The Human Rights granted by Allah are part of the Islamic faith. Muslims have to accept these not only verbally but they also have to practice them. Besides, they are not allowed to amend or change them. Those who do so or practically go against the idea by paying only lip service to them will be considered guilty, and verdict of the Quran for such people is

“Those of you who do not judge by what Allah has sent down are the disbelievers” (5:44)

Another significance of the Islamic concept of Human Rights is that it is more comprehensive and balanced as it emphasises equally on human duties also. It caters for physical well being, needs and aspirations of human beings as well as considers the ethical, moral and spiritual development of personality.

It is the religious duty of a Muslim to protect the rights of his fellow beings in the same spirit as he protects his own rights. True realisation and implementation of Human Rights will result in evolving a harmonious, peaceful, dignified human society free from oppression and degradation.

Human Rights in an Islamic State

The Holy Quran and the Traditions of the Holy Prophet (PBUH) give an exhaustive list of rights, from preservation and promotion of life to social, economic and political rights, which humans owe to other humans. Some of these rights are listed below.

1. Social Rights

Security of Life and Property:

In the Holy Prophets (PBUH) last sermon, delivered on the occasion of the Farewell Hajj, he said: “Your lives and properties are forbidden to one another until you meet your Lord on the Day of Resurrection.” The Holy Prophet (peace be upon him) also provided for the Dhimmis (non-Muslim citizens of the Muslim state) by declaring: “ One who kills a man under covenant (i.e. Dhimmi) will not even smell the fragrance of Paradise.”

First basic human right and ethical obligation, declared by the Quran is respect, preservation and promotion of life (nafs) as such.

*That whosoever killeth a human being for
Other than manslaughter or corruption in the earth,
It shall be as if he had killed all mankind, and*

*Who so saveth the life of one. It shall be as if he had
Saved the life of all mankind. Al-Ma'idah 5:32*

Right to protection of goodwill and reputation.

*O ye who believe! Let not a folk
Deride a folk who may be better than
They (are), nor let women (deride)
Women who may be better than
They are; neither defames one another,
Nor insult one another by nicknames.
Bad is the name of lewdness
After faith. And who so turneth
Not in repentance, such are evildoers. Al-Hujarat 49:11-12*

Freedom of Expression:

Islam gives the right of freedom of thought and expression to all citizens of the Islamic state on the condition that it should be used for the propagation of virtue and truth and not for spreading evil and wickedness. It also does not give anybody the right to use abusive or offensive language in the name of criticism.

*O ye who believe! Shun much suspicion;
For lo! Some suspicion is a sin. And spy
Not, neither backbite one another.
Would one of you love to eat the flesh
Of his dead brother? Ye abhor that
(so abhor the other)! And keep your
duty (to Allah). Lo! Allah is Relenting, Merciful.*

On Sanctity and Security of Private Life: The Holy Quran has laid down the following injunction:

*O ye who believe! Enter not houses
Other than your own without first
Announcing your presence and
Invoking peace upon the folk thereof. Al-Nur 24-27
That is better for you that ye may
Be heedful.*

The Right to Basic Necessities of Life:

Islam has recognized the right of the needy people for help and assistance to be provided to them; thus Quran says;
and in their wealth there is acknowledged right for the needy and destitute. (51:19)

Give the kinsman his due, and the

*Needy, and the wayfarer, and squander
Not (thy wealth) in wantonness.*

Bani Isra'il 17:26

2. Legal Rights

Islam gives its citizens the right to absolute and complete equality in the eyes of the law.

Right to equality in justice.

*O ye who believe! Be steadfast witnesses
for Allah in equity, and let not
hatred of any people seduce you that ye deal not justly.
Deal justly, that is nearer to your duty.
Observe your duty to Allah. Lo! Allah
Is informed of what ye do.*

Al-Ma'idah 5:8

3. Religious Rights

Right to practice *din*: Religious and Cultural Freedom.

*There is no compulsion in religion. The
Right direction is henceforth distinct from
Error. And he who rejecteth false deities
And believeth in Allah hath grasped a firm
Handhold, which will never break.
Allah is Hearer, Knower.*

Al-Baqarah 2:252

4. Political Rights

Right to struggle for just social order

*And the believers, men and women, are
Protecting friends one of another; they
Enjoin the right and forbid the wrong,
And they establish worship and they pay
The poor-due they obey Allah and His messenger.
As for these, Allah will have mercy on them.
Lo! Allah is mighty, wise.*

Ak-Tawbah 9:71

The Right to Protest Against Tyranny:

Among the rights that Islam has conferred on human beings is the right to protest against a government's tyranny. Referring to this, the Quran says:

"Allah does not love evil talk in public unless it is by someone who has been injured thereby." (4:148)

Accountability of Rulers to the Law and Equality before the law:

A woman belonging to a high and noble family was arrested in connection with theft. The case was brought to the Prophet(PBUH), and it was recommended that she might be spared the punishment of theft. The Prophet (PBUH) replied, “The nations that lived before you were destroyed by God because they punished the common-man for their offences, and let their dignitaries go unpunished for their crimes. I swear by him who holds my life in his hand that even if Fatimah, daughter of Muhammad(PBUH), had committed this crime, I would have amputated her hand.”

The Right to Participate in the Affairs of State:

The Shura or the legislative assembly has no other meaning other than that: the executive head of the government and the members of the assembly should be elected by free and independent choice of the people. Thus Quran says,

And their business is (conducted) through consultation among themselves. (42:38)

Right to Political Power sharing

*Allah hath promised such of you as
Believe and do good works that He will
Surely make them to succeed (the present
Rulers) in the earth even as He
Caused those who were before them to
Succeed (others); and that He will surely
Establish for them their religion which
He hath approved for them, and will give
Them in exchange safety after their fear.
They serve me. They ascribe nothing
as partner unto Me. Those who disbelieve
hence forth, they are the miscreants.*

Al-Nur 24:55

It is clear that Islam tries to achieve the above-mentioned human rights and many others not only by providing certain legal safeguards, but mainly by inviting mankind to transcend the lower level of animal life to be able to go beyond the mere ties fostered by the kinship of blood, racial superiority, linguistic arrogance, and economic privileges. It invites man to move on to a plane of existence where, by reason of his inner excellence, man can realize the ideal of the Brotherhood of mankind.

Section-II

The United Nations System for Protection of Human Rights.

It was not until the world witnessed & experienced the horrors of 2nd World War that the need and realization for a universal Human Rights system for its protection became apparent/must/coherent,¹⁰ and it resulted in the formation of the United Nations. The first UN conference was held in San Francisco between 25th April to 26th June 1945 and was attended by the representatives of 50 states. At this conference the UN Charter and Laws for International Court of Justice were drafted. Key organs of the UN were also established. These are listed below with brief descriptions emphasizing their role as promoters protectors of the Human Rights.

A. Charter Based Organs

1. General Assembly.
2. Security Council
3. Economic and Social Council.
4. Trusteeship Council
5. International Court of Justice
6. Secretariat



B. International Instruments

1. UN Charter
2. International Bill of Rights
 - (i) The Universal Declaration of Human Rights.
 - (ii) International Covenant on Civil and Political Rights.
 - (iii) International Covenant on Economic, Social and Cultural Rights.

C. Implementation Mechanism

1. The UN Commission on Human Rights and Sub Commission on Prevention of Discrimination and Protection of Minorities
2. Human Rights Committee.
3. United Nations High Commissioner for Human Rights.

A. Charter Based Organs

(1) UN General Assembly

The General Assembly is the (only) central organ where all States can debate any relevant matter. All members of the United Nations are represented in the General Assembly, they can discuss and make recommendations on any subject (except where the Security Council is dealing with the same subject) they can receive and review reports from the Security Council and other organs and the Secretary General. The resolutions of the General Assembly are recommendatory in nature. According to Article 13(1) (b) of the UN Charter, in Human Rights matters, the General Assembly has two principal obligations: (i) to initiate studies; and (ii) to make recommendations for the

¹⁰ The atrocities committed by the Nazis forced the Allies to realize that the post war settlement should include a commitment to the protection of Human Rights. A wave of public opinion arose which demanded the establishment of organized international protection of Human Rights & condemnation, prohibition & suppression of fascist policy in every form.

purpose of “assisting in realization of Human Rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”

(2) Security Council (SC)

The Security Council consists of five permanent and ten non-permanent members. The main purpose of the Security Council is maintenance of the International peace and security. The Security Council while dealing with such disputes, which endanger the international peace and security, can take action under Chapter 7. It has repeatedly made pronouncement on questions of Human Rights. Any country, member or non-member or the Secretary General may bring to the Security Council’s attention, a dispute or threat to peace.

(3) Economic and Social Council (ECOSOC)

The main function of ECOSOC is the promotion of Universal respect for and observance of Human Rights in matters of International Economic and Social Cooperation. Its main concerns are economic and general welfare issues like trade and development and social issues like population, children, housing and racial discrimination etc. At the moment it consists of 54 members elected by the Assembly on the basis of an equitable geographical distribution.

(4) The Trusteeship Council

After the formation of the UN, former territories, which were under the covenant of the League of Nation, were placed under the protection of the UN Trusteeship system with a Council, supervising the system. The main aim of the Council is to supervise the social advancement of the people of trust territories. Most of these territories, which were in Africa and in the Pacific Ocean, have attained self-rule now.

(5) International Court of Justice (ICJ)

International Court of Justice is the principal judicial organ of UN and its statutes form an integral part of UN Charter.¹¹ In contentious cases, only states can be parties before the court. The court upon a request by the General Assembly, allows Security Council or other organs to give advisory opinion on legal questions. Thus individuals and NGOs have no access to this court. The court has been frequently called upon to examine Human Rights questions both in contentious and advisory proceedings. Sometimes the court has to deal with the interpretation of Human Rights treaties as well.¹²

(6) Secretariat

It is the administrative body of UN and headed by the Secretary General. Its aim is to look after the day-to-day functioning of the UN. Secretary General is the chief administrative officer and

¹¹ The ICJ consists of 15 Judges elected by concurrent votes of the Security Council and General Assembly.

¹² E.g. in Haya de la Torre case court interpreted The Convention of the Rights to Asylum in 1928, Similarly interpretation of peace Treaties 1950 and advisory opinion on Genocide Convention etc.

acts in that capacity in all UN organs.¹³ He can propose issues to be discussed by the G.A. or any other UN organ.

The primary organizational unit of the Secretariat is the Division of Human Rights.¹⁴ It provides secretarial services to such bodies as the Third Committee of General Assembly, ECOSOC and Commission on Human Rights etc. Research is also conducted at the request of organs, materials are provided and reports are prepared under procedures for monitoring Human Rights implementation.

B. International Instruments

1. UN Charter

The UN Charter was the first international instrument to recognize that individuals have certain rights that are of Universal character and imposed an obligation on States to respect and promote such rights. Thus the UN Charter laid down the foundation of international Law of Human Rights.

In 1945, at the San Francisco Conference the task to draft the UN Charter was accomplished. In all, there are seven references to Human Rights in the Charter, most important among which is Article 55 that provides that the United Nations shall promote “Universal respect for, and observance of, Human Rights and fundamental freedoms for all without distinction, of race, sex, language or religion”. In Art. 56 all members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of purposes set forth in Art 55. When Art.55 and 56 are read together they create a clear obligation on States to promote respect and observance of Human Rights as mentioned in Art.55.

Membership is open to all “Peace-Loving States”. The Purposes and Principles of the UN Charter are mentioned in Article 1:

- ❖ To maintain international peace and security;
- ❖ To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people, and to take other appropriate measures to strengthen universal peace;
- ❖ To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for Human Rights and for fundamental freedoms for all without distinction as to race, sex, language or religion;
- ❖ To be a center for harmonizing the actions of nations in the attainment of these common ends.

The Organisation and its members in pursuit of the purposes stated in Art 1 (supra), shall act in accordance with the following principles:

¹³ UN Secretary General is appointed for a term of five years by G.A on the recommendation of the Security Council

¹⁴ The other parts of the Secretariat are Dept, of Political and Security Council Affairs, office of Legal Affairs , office of public information and Dept. of Political Affairs , Trusteeship and Decolonization

- ❖ Sovereign equality.
- ❖ Member states are required to settle international disputes by peaceful means without endangering international peace and security.
- ❖ Member states shall refrain from threat or use of force against territorial integrity and political independence of any state.

2. International Bill of Rights

The International Bill of Rights is a collection of international documents, namely; (i) the Universal Declaration of Human Rights, (ii) International Covenant on Civil & Political Rights and (iii) The Two Optional Protocols to the Covenant on Civil & Political Rights (iv) International Covenant on Economic, Social, and Cultural Rights.

(i) The Universal Declaration of Human Rights

Soon after the adoption of the UN Charter no time was lost in bringing into reality the proposal of preparing a detailed document on Human Rights. To achieve this purpose the ECOSOC established a “Commission on Human Rights”. The first task assigned to the Commission was to prepare an International Bill of Human Rights that would elaborate the rights generally dealt within the UN Charter. The task was to be accomplished in three stages the first of which was a Declaration.

The Declaration was adopted on 10th December 1948 by the General Assembly and came to be known as the Universal Declaration of Human Rights. The Declaration was never intended to be legally binding and it was a statement of inalienable Human Rights setting up a common standard of achievements. Its thirty articles contain a wide variety of civil, political, social and cultural rights. It served, as a basis for the Covenant on Civil and Political Rights and the Covenant on Economic Social and Cultural Rights that are legally binding and which collectively constitute the International Bill of Rights.

It is a foundational norm-breaking document that is a combination of values and norms. Since its adoption in 1948, it is widely accepted and even regarded as the enlightened conscience of man. Even though not legally binding it may well have become part of the Customary International Law and enforceable as such.

(ii) International Covenant on Civil & Political Rights (ICCPR)

The International Covenant on Civil & Political Rights (ICCPR) was adopted in 1966 and came into force in 1976. The covenant covers all the rights of man, considered as a social being and as an individual. They include the rights of man regarded as a citizen as well as the rights of certain groups and individuals as the members of a given group.¹⁵ As part of the International Bill of Human Rights, it gives binding force to various Civil and Political Rights contained in the Universal Declaration Of Human Rights e.g. the right to life, freedom from torture and inhuman

¹⁵ Imri Szabo “Historical Foundations of Human Rights” in Karl Fasak “International Dimensions of Human Rights”. p30

treatment, freedom from slavery, freedom of thought, conscience and religion, freedom of association, the right of assembly, freedom from punishment for death, right to fair trial, equality before law etc. The list is extensive. The number of rights included is greater than given in Universal Declaration of Human Rights or the European Convention. Some of the rights that are not mentioned in Universal Declaration of Human Rights but are included in ICCPR are as following:

- ❖ Right of detained persons to be treated humanely.
- ❖ The rights of the child.
- ❖ The rights of minorities.
- ❖ Prohibition of propaganda for war and incitement to hatred.
- ❖ Freedom from imprisonment for debt.

On the other hand the right to property that was included in the UDHR is not mentioned in covenant (ICCPR).¹⁶ Art.1 of ICCPR deals with the right of people to self-determination.¹⁷ Under Art.2 “each state party under takes to respect and ensure to all individuals within its territory and subject to its jurisdiction the right recognized in the present covenant”. Paragraph 2 of the same article creates “an obligation to take the necessary steps and to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in Covenant”.

(First) Optional Protocol to the International Covenant on Civil and Political Rights:

This treaty, which came into force in 1976, was adopted as a separate instrument, which supplements the measures of implementation of the Covenant on Civil and Political Rights. It enables private parties, claiming to be victims of a violation of the Covenant, to file “individual” communications or complaints with the Human Rights Committee. The complaints may only be filed against States Parties to the Covenant that have ratified the Protocol.

(Second) Optional Protocol to the International Covenant on Civil and Political Rights:

This treaty came into force in 1991 and is deemed as an additional provision of the Covenant on Civil and Political Rights. The objective of the second Protocol is the abolition of the death penalty. To this end it provides that once a state has ratified the Protocol, “no one within its jurisdiction shall be executed”, and, second, that each State Party must take whatever measures are necessary to abolish the death penalty within its jurisdiction.

(iii) International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights was adopted in 1966 and in 1976. It is the most detailed document that deals with entire field of international social welfare

¹⁶Merills T and Robertson “Human Rights” in Karl Fasak “International Dimensions of of Human Rights” p30

¹⁷ Self determination is the right of an entire people or an ethnic group and as such a collective right which leads to the creation of an independent state.

law. Initially the ICCPR and ICESCR were intended to be one Covenant, but were separated as the rights contained in the ICESCR were aspirational and goal setting and not capable of enforcement. However, some writers argue that they were separated because the rights contained in the ICESCR do not fit into the market economy of the west.¹⁸ Some of the rights recognized are right to work, right to just and favorable conditions of work, right to social security, right to an adequate standard of living, right to health, right to education etc. The implementation procedure provided for in ICESCR is not as rigid as in the ICCPR, which is only by reporting i.e. each year states parties report to the ECOSOC on measures taken for the implementation of the obligations under the Covenant and reasons for failure of such implementation. After considering the state parties report ECOSOC submits it to various specialized agencies of the United Nations and then to the General Assembly.

C. Implementation Mechanism

The Conventions and Covenants of the UN are implemented through the following mechanisms:

1. The UN Commission on Human Rights and Sub Commission on Prevention of Discrimination and Protection of Minorities.
2. The Human Rights Committee.
3. The UN High Commissioner for Human Rights.

1. The UN Commission on Human Rights and Sub-Commission on Prevention of Discrimination and Protection of Minorities

Article 68 of the UN Charter mandates the ECOSOC to establish “commissions in economic and social fields and for the promotion of human rights.” ECOSOC complied with this mandate in 1946 by creating the Commission on Human Rights. Initially composed of 18 members, the size of the Commission has been expanded over the years; today it consists of 53 states.

The primary responsibility/task assigned to the Commission was the drafting of “standard setting” international Human Rights documents. It initially, did not concern itself with hearing complaints regarding Human Rights violations. However, later in 1967 under ECOSOC resolution 1235 the Commission and its Sub-Commission on Prevention of Discrimination and Protection of Minorities were authorized to receive information regarding gross violations of Human Rights, elicit replies from concerned states and to make recommendations to the ECOSOC.

In 1970 this step was further improved by the ECOSOC through resolution 1503 which empowered the Sub-Commission to establish a five member-working group whose task is to screen all incoming communications which appear to reveal a consistent pattern of gross Human Rights violations together with any replies from the relevant government. An adhoc committee sends a confidential report to the Commission on Human Rights, which then decides whether to undertake a thorough study in accordance with resolution 1235 or to make it a subject of study.¹⁹

¹⁸ Alston P, and Quinn, G. “Nature and scope of State parties obligations under ICESR” HQR (1987) P161.

¹⁹ The adhoc committee must obtain the consent of the relevant Govt. and it must also ensure that individuals involved in making the complaints have direct and reliable knowledge of violations,

In summation it can be said that the Commission became the first international body to receive complaints regarding the Human Rights violations from individuals against their states and to receive response from the state.

2. The Human Rights Committee

The Human Rights Committee was established under Art.28 of the Covenant. It consists of eighteen members and is responsible for the implementation of ICCPR. There are three methods/procedures for the implementation.

(i) Reporting Procedure

Under Art.40 of the Covenant state parties to the Covenant are under obligation, to submit reports to the Committee on the steps, they have adopted and the progress made in giving effect to the implementation of the Covenant. Reports are to be submitted within one year of the entry into force of the Covenant for the state party concerned and thereafter whenever the committee so requests.

The committee studies the reports submitted by the state parties and then transmits its own report and general comments to the state parties. The general comments can be on subjects like implementation of the obligations to submit report under Art.40, the implementation of the obligation to guarantee the rights set forth in the Covenant; questions relating to the application and the content of various articles of the Covenant and suggestions concerning cooperation between state parties in applying and developing the provisions of the Covenant.²⁰ Other responsibilities of the committee are to enter into a constructive dialogue with each reporting state party. It also develops guidelines for the new reports to be submitted by the state party.

(ii) Interstate Complaint Procedure

Under Art.41 of the Covenant state party may file a complaint before the committee that another state party is not complying with the provisions of the Covenant.²¹ When a matter is referred to the committee, it first of all ascertains whether all domestic remedies have been exhausted or not. The committee makes its good offices available to state parties in order to find out a friendly solution of the matter. If a friendly solution is reached the committee confines its report to a brief statement of facts and of the solution reached. In case no friendly solution is reached then the committee in its report gives a brief statement of facts, the written submission and record of oral submissions. The committee can also appoint an adhoc conciliation commission but with the prior consent of the state parties for further consideration of the matter. The Human Rights Committee also submits an annual report of its activities to the General Assembly through the ECOSOC.

(iii) Individual Complaints

Under the (First) Optional Protocol to the International Covenant on Civil and Political Rights, an individual may file a complaint before the Committee who claim to be the victim of a violation by

all local remedies exhausted and communication is not under consideration of any other international procedure.

²⁰ Das, Kamleshwar "UN Institutions and Procedures" in Vasak, K "The International Dimensions of Human Rights".p337

²¹ This procedure is not mandatory and can be invoked only by the states, which have declared the competence of the committee to hear such complaints.

a state party of any of the rights set forth in the Covenant after the exhaustion of all available domestic remedies. If a victim is unable to submit a communication himself, then a communication can be submitted on his behalf provided a close link exists between the author and the alleged victim. If an alleged violation took place prior to the date of entry into force of the Covenant and the protocol, it will be declared as in-admissible but if the author claims that the violation continued even after such date it will then be taken into consideration.

Once a communication is admitted the decision and text of relevant documents are communicated to the state party as well as to the author of the communication through the Secretary General. The State party then within six months submits to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken. The state party's submission is then forwarded to the author of the communication.

The author at this stage may submit any further written information or observation and the Committee will then consider the communication in light of all observations forwarded by both parties.²²

In the end final views of the committee are forwarded to the state party as well as to the individual concerned.

3. United Nations High Commissioner for Human Rights

After the Cold War, the UN increased its efforts for the protection of Human Rights. In Vienna Conference, 1993 it was decided to establish an office of the High Commissioner for Human Rights. The responsibility of the High Commissioner is not to act as a policeman for the world community. On the contrary he should create good will among the states by constant dialogue and mutual meetings so that solid results can be achieved for the development of Human Rights in the light of the mandate. The duties of the High Commissioner are based on three principles.

- ❖ Co-operation at every level.
- ❖ A comprehensive and solid approach for the planning and development of Human Rights programs.
- ❖ The participation of all groups working for Human Rights programs at national, regional and international level.

(i) Women Rights and the United Nations

The United Nations, its specialized and regional agencies have adopted a number of international treaties and instruments on Human Rights. These international treaties and instruments suggest that all Human Rights norms embrace both men and women and are equally applicable to both sexes. The issue of women's rights has been part and parcel of all international treaties and even a cursory look at the history of development of international Human Rights law suggest that women rights were being realized from the very beginning.

²² Working group is constituted to examine and make recommendation to the committee in formulating its final views under Art.5 (4) of the protocol. A special rapporteur may also be appointed for this purpose.

The UN charter was the first International treaty to spell out the principle of equality in specific terms, right up to the International Bill of Human Rights.²³ The goal of achieving equality between the sexes has been reiterated in each of them.

Unfortunately these instruments despite upholding the principle of equal rights of humanity based on gender equality failed to ensure women's rights and the result was that violation of Human Rights and discriminatory practices against women continued at all levels. The need for a specific international instrument & effective implementation machinery was therefore severely felt to protect women against all sorts of discrimination. It was in this background that the UN General Assembly adopted International Convention on the Elimination of all Forms of Discrimination Against Women unanimously on 18 Dec. 1979.

The Convention on the Elimination of all Forms of Discrimination Against Women: (CEDAW) 1979.

The convention is the out come of efforts of the UN Commission on the Status of Women. It is a single international instrument, which carries in its legislative ambit the provisions of various international instruments on women's rights as well as includes many of the recommendations of the commission adopted since the commission's inception in 1946. Thus, it unites in a single document not only the then existing documents for improving rights of women but also contains new rules.

To put it in brief the Women's Convention is a major break through in international Human Rights law as it recognizes the need to go beyond the legal documents to address factors, which will eradicate de facto inequality between men and women.²⁴ By the adoption of the Women's Convention the separate concepts of "women's rights" were recast in a global perspective and a positive effort was made to integrate women's Human Rights into the main stream of Human Rights framework.²⁵

The pattern of Women's Convention resembles the 1965 Convention on the Elimination of All Forms of racial Discrimination. The Women's Convention consists of a preamble and is divided into six main parts.

The Preamble

The preamble which consists of 15 paragraphs is very comprehensive and identifies a number of collective rights, it not only recognizes the need for justice in granting to women equal status with men but it also covers several other factors as eradication of de facto inequality between men and

²³ The United Nations Declaration of Human Rights (Universal Declaration of Human Rights) the International Convention of Civil & Political rights (ICCPR) & the International Covenant on Economic, Social and Cultural rights together constitute the Bill of rights.

²⁴ Preamble to the Women's convention.

²⁵ Shaheen Sardar Ali "A comparative study of Convention On The Eliminationof All Forms Of Discrimination Against Women with Islamic Law and Laws of Pakistan", Shaheen Publishers, Peshawar, 1995, P: 6.

women, the establishment of New International Economic Order, eradication of apartheid, racism, colonialism, neo colonialism and foreign occupation and domination and strengthening of international peace and security including disarmament. These are all urged as being essential to the equality of men and women.²⁶

All these issues are linked in the preamble with the question of elimination of discrimination against women. In recent years there has been an increased understanding within the United Nations to establish a connection between women, peace and development. Although some states have criticized the linking up of these issues to discrimination in the preamble. However this is not the view of a number of third world states, which view Human Rights as part of the worldwide move towards development.

The Women's Convention also realizes that culture and traditions play an important role in restricting women's enjoyment of their fundamental rights. The influence of these stereotype roles, customs and norms has lead to legal, political and economic constraints on the progress of women. Bearing in mind this situation the preamble of the Women's Convention demands "a change in the traditional role of men and women as well as the role of women in society and in the family are needed to achieve full equality of men and women". It also requires from the state parties to work for the elimination of such customs, prejudices and all other practices, which are based on the idea of the superiority or the inferiority of either of the sexes.

Part I: Discrimination

The first part which consists of six articles deals specifically with the term "Discrimination". Article 1 while defining the term discrimination says, "Discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women of Human Rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

In order to eliminate discrimination against women the convention requires the state parties to adopt such measures including changes in the constitutions of the state parties and also changes in those legislative provisions that are discriminatory against women.

Not only those changes in the national constitutions and in various legislative provisions are required but as far as political, social, economic and cultural fields are concerned the state parties should take appropriate measures including legislation for the development of women on an equal basis with men.

Part II: Political Rights of Women

The right to stand for election to all publicly elected bodies, to hold public office and to participate in formulating government and public policy are mentioned in the Convention. This is an area in which an international convention named as "The Convention on the Political Rights of Women 1952" already existed. However, the Women's Convention expands the concept of political rights and can therefore be seen as an advance on the 1952 Convention on the Political Rights of Women.

²⁶Noreen Burrow "The 1979 convention of Elimination of All forms of Discrimination Against Wome" National Law Report 1985 P. 21.

Article 9 provides for the state hood of women irrespective of their marital status. Under this article it is the duty of the state parities to grant women equal rights with men to acquire, change or retain their nationality and so instead of depending on husband's nationality they have been given the right to choose their own nationality. It also grants women equal rights with men with respect to the nationality of their children.

Part-III: Economic and Social Rights

Part three of the 1979 Convention deals with Non Discrimination in the fields of education, employment, and economic and social activities. The Women's Convention not only covers the rights of women living in urban areas but it has also taken into account the problems faced by rural women in order to raise their status and to provide better treatment to them. It is worth mentioning here that it was for the first time that an international legal instrument has dealt with the problems of rural women.

Article 14 specifically states that all appropriate measures on the basis of equality of men and women shall be taken to ensure participation of women in rural development and steps for their benefit will be taken, like access to adequate health facilities, information, counseling in family planning and all types of formal and informal training including that relating to functional literacy shall be given.

Part-IV: Civil Rights

It deals with civil law. Article 15 emphasizes the full equality of women in civil and business matters. It requires state parties to give women equal rights to enter into contracts, to administer property and to be treated equally in all stages and procedure in courts and tribunals or in plain words it can be said that it obligates the state parties to ensure equality before the law. It further demands that all instruments aimed at restricting women's legal capacity should be declared as null and void. Article 16 provides for elimination of discrimination in marriage and the family.

Women play a very important role in the family life but in our part of the world they are often not a party to the contract of marriage in the real sense of the word. In order to prove the significance of women's position in the family and marriage contract, Article 16 of the convention lays down that marriage and family relation are to be based on the equality of women and men with same right to choose a spouse, enter into marriage and the same rights and responsibilities for the parenting of children.

Part-V: Committee on the Elimination of All Forms of Discrimination Against Women

The Women's Convention not only aspires to get the ultimate achievement of the elimination of all sorts of discrimination against women but it also emphasizes the obligation of adopting means to achieve this end. The adoption of the Women's Convention is a proof that the treaty signifies the means to be adopted to achieve this ultimate result. Part V lays down the procedure for the formation and working mechanism of the Committee on the Elimination of All Form's of Discrimination Against Women (CEDAW). The Committee was established by Article 17(1) of

the convention for the purpose of considering the progress made in the implementation of the convention by the ratifying states. This is done by submitting reports within one year after entry into force of the convention. The report should provide information on legislative, judicial and administrative or other measures, which they have adopted to give effect to the provisions of the Convention.

The Committee consists of 23 independent experts of high moral standing and competence in the field. The members of the committee do not represent their respective governments but serve in their personal capacity.

Limitations of the Convention

The Convention does suffer from many procedural and substantive weaknesses. The language of the Convention is considerably closer to that of a political declaration than that of an international treaty.²⁷ The Convention also fails to address some of the more fundamental issues like violence against women, abortion, rape etc.

Another problem in implementing the Convention is the reservations entered into by state parties. Of all Human Rights instruments the Women's Convention has attracted most of the reservations and some of them are so sweeping and overriding in nature that the issue of good faith and integrity of the instrument inevitably comes into question.²⁸ A recent development is an Optional Protocol that has been added to the convention in 1999, which provides for individual petition, but it still requires ratification by the states.

(ii) Child Rights and the United Nations

Convention on the Rights of the Child

The Convention on the Rights of the Child was carefully drafted over the course of 10 years (1979-1989) with the input of representatives from all societies, all religions and all cultures. A working group was formed that consisted of members of the United Nations Commission on Human Rights, independent experts and observer delegations of non-member governments, non-governmental organizations (NGOs) and UN agencies which drafted the document. NGOs involved in the drafting represented a range of issues – from various legal perspectives to concerns about the protection of the family.

The Convention reflects this global consensus and, in a very short period of time, it has become the most widely accepted Human Rights treaty ever. So far 191 countries (with the exception of two) have ratified the Convention. The United States, which has signaled its intention to ratify by formally signing the Convention, now stands as the only industrialized country in the world and one of the only two United Nations member States yet to ratify. The other country is Somalia, which is presently without a recognized government.

The Convention on the Rights of the Child reflects a new vision for the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision for the child as an individual

²⁷ L Reanda, in Alston (ed.) "Human Rights and Women's Rights: The UN Approach".

²⁸ Ali.S.S, and Mullally.S, Women in Muslim countries; A case Study" in Hind, Working out: New directions for Women Studies. (London Farmer Press), 1992, 113-123.

and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognizing children's rights in this way, the Convention firmly sets the focus on the whole child.

The Convention on the Rights of the Child incorporates the full range of Human Rights – civil and political rights as well as economic, social and cultural rights – of all children. The underlying values or 'guiding principles' of the Convention show the way each right is to be fulfilled and respected and serve as a constant reference for the implementation and monitoring of children's rights. The Convention's four guiding principles are as follows:

- Non Discrimination
- Best interest of the child
- Survival and Development
- Participation

The Text of the Convention

The Convention on the Rights of the Child outlines, in 41 articles, the Human Rights to be respected and protected for every child under the age of 18 years and requires that these rights be implemented in the light of the Conventions guiding principles.

Articles 42-45 cover the obligation of States Parties to disseminate the Convention's principles and provision to adults and children; the implementation of the Convention and monitoring of progress towards the realization of child rights through States Parties' obligations; and the reporting responsibilities of States Parties.

In May, 2000, two Optional Protocols to the Convention were adopted by the General Assembly, titled respectively, as

- (i) Optional protocol to the CRC on the Involvement of Children in Armed Conflict.
- (ii) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

The Optional Protocol places emphasis on the criminalisation of serious violations of children's rights namely sale of children, illegal adoption, child prostitution and pornography. Similarly, the text stresses the value of international co-operation as a means of combating these transnational activities, and of public awareness, information and education campaigns to enhance the protection of children from these serious violations of their rights.

To date, 92 countries have signed and 18 have ratified this Protocol. In order for the Optional Protocols to enter into force, States must ratify each of the Protocols following the same procedure required when ratifying the Convention. In the case of the Optional Protocol on the involvement of children in armed conflict, upon ratification States are also required to make a declaration regarding the age at which they will permit voluntary recruitment into national forces.

Reporting Mechanism

The Convention under Art. 43 establishes a ten member Committee of experts on the Rights of the Child to examine the progress made by States parties in achieving its objectives. The experts are to be selected by the states parties from among their nationals.

For each of the Optional Protocols, the Committee on the Rights of the Child has adopted guidelines which provide information which States are expected to give in their implementation reports.

(iii) Rights of Refugees and The United Nations

Convention on the Status of Refugees 1951

The United Nations Convention Relating to the Status of Refugees was adopted in December 1951, following a resolution of the UN General Assembly in 1950, and entered into effect in April 1954. It was the first truly international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of basic Human Rights, which should be at least equivalent to freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises and the necessity of international cooperation, including burden sharing among states, in tackling the problem.

Since the 1951 Convention is an internationally agreed document the definition of refugees provided by it is accepted universally. It defines a refugee as a person:

(Who) owing to (a) 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

The Convention was limited to protecting mainly European refugees in the aftermath of the World War II, but a 1967 Protocol expanded the scope of the convention as the problem spread around the world. It removes the geographical and time limitations written into the original Convention under which mainly Europeans involved in events occurring before 1 January 1951, could apply for refugee status. The original document also inspired regional instruments such as Organisation of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 and the Cartagena Declaration on Refugees 1984.

Both the Organization of the African Union (OAU) Convention and the Cartagena Declaration broaden the concept of the refugee enshrined in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. They resulted from a perception and an experience in Africa and Latin America that there was a need to complement the 1951 Convention, as modified by the 1967 Protocol, in order to provide adequate responses to new dimensions of mass displacements of persons in need of international protection and assistance.

Salient Features of the Convention on the Status of Refugees:

Obligations under the Convention fall squarely onto the receiving state, and come into effect after the asylum seeker has entered its territory and made a claim for refugee status. The most basic principle, or core obligation, of signatory states is that of 'non-refoulement', i.e. not sending someone back to a country where he might face persecution. However persons who have committed crimes against peace, war crimes, crimes against humanity or a serious non-political crime outside the country of refuge are not covered by the Convention.

Another important obligation (and source increasing tension with the rise of people smuggling) is not to penalize asylum seekers for entering a signatory country 'illegally'.

Although not required by the Convention, yet Western signatory states have established refugee determination processes under the guidance of United Nations High Commission for Refugees (UNHCR). While administrative and legal systems vary, the central features are the same. Claims are assessed, on an individual basis, according to whether there is a 'real' possibility the claimant would face persecution, if returned. Decisions are made on the 'credibility of story' basis, assisted by 'country information' gleaned from such sources as foreign affairs officials, Amnesty International and other non-governmental organizations. For obvious reasons, less burden of proof is required in refugee decisions; and no attempt is made to check stories with allegedly persecutory governments. Also for obvious reasons, the possibly life threatening consequences of getting it wrong, decisions are made on a 'benefit of the doubt' basis. While granting of permanent resident status is not a standard practice.

(iv) The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the UN General Assembly in 1984. It defines the term “torture” as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

In addition to defining “torture”, the Convention requires States parties to take effective measures to prevent acts of torture in any territory under their jurisdiction. No exceptional circumstances, such as war or public emergency, can be invoked to justify torture; nor can obedience to an order from a superior officer or a public authority be invoked as justification.

States parties undertake not to expel, return, or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture and to ensure that all acts of torture, attempts to commit torture, complicity, or participation in torture are offenses punishable under their criminal law.

The Convention also provides for prosecution or extradition of persons alleged to have committed acts of torture and States parties are called upon to afford one another judicial assistance in connection with criminal proceedings concerning acts of torture. It calls for education on the prohibition of torture to be part of the training of law enforcement personnel and other persons involved in the custody, interrogation, or treatment of prisoners or detainees; and it provides that States parties shall ensure legal measures for protection and compensation for victims of torture. Other forms of cruel, inhuman or degrading treatment or punishment, as defined in the Convention, which may be committed by persons acting in an official capacity, are also prohibited.

The implementation of the Convention is monitored by the Committee Against Torture, consisting of 10 experts, elected by States parties to the Convention and serving in their personal capacity. States parties to the Convention are required to report regularly to the Committee on the measures they have taken to give effect to the provisions of the Convention. The Committee considers such reports, makes general comments on them, and informs the other States parties and the General Assembly of its activity.

(v) Rights of Religious Minorities in International Law

After World War I, a systematic attempt was made to provide international guarantees for the protection of minorities. The League of Nations Covenant made a particular reference to protecting freedom of religion along with the maintenance of international peace. Treatment of Jews by the second Reich in Germany and elsewhere (e.g., in Tsarist Russia), and the horrors of the Holocaust showed the world how vulnerable religious minorities could be; hence the resolve of the international community never to let such acts be repeated in future.

The UN Charter itself makes no specific mention of minorities, but the principle of protection of human rights for all without discrimination, enumerated in a number of articles, is considered an important step forward.²⁹ Despite the lack of specific reference to minorities in the UN Charter, a sub-Commission on the Prevention of Discrimination and the Protection of Minorities was formed under the Commission on Human Rights.³⁰ Among its terms of reference included work towards protection of minorities; prevention of discrimination on grounds of race, sex, language, or religion.”

The Universal Declaration of Human Rights also makes no reference to minorities, but mention of Article 18 is important here as it extends to ‘everyone’, “the right to 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.”

Article 27 of the ICCPR is also relevant as later Human Rights instruments have sought inspiration from it. It states 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 profess and practice their own religion, or to use their own language.”

To date the most detailed international instrument protecting right to religion is the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) (The Religious Discrimination Declaration).³¹ It calls for providing everyone freedom of thought, conscience and religion; [Article 1(1)] that no one shall be subject to coercion which would impair his or her freedom to have a religion or belief of his or her choice. [Article 1(2)].

The Religious Discrimination Declaration extends to parents the right to organise family life in accordance with their religion or belief [Article 5(1)], and provides that every child shall enjoy the right to have access to religious education [Article 5(2)]. The Declaration lists a number of freedoms, including the right to worship, to maintain charitable or humanitarian institutions, to acquire materials related to religious rights, to issue publications, to teach, solicit financial contributions, to train leaders, to observe holidays, and to communicate with others regarding religion. It calls for national legislation, which would enable persons to avail themselves of these freedoms (Article 7).

Last but not least, is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) (Minorities Declaration).³² The Minorities Declaration attempts to build on the various human rights documents that have addressed either directly or indirectly the issue of minorities by recalling these in its preamble. The instruments referred to

²⁹ See for example, United Nations Charter, 1945, Articles 1, 55, 56, 73-74.

³⁰ The Commission on Human Rights was formed under article 68 of the UN Charter. Thorn berry, note 1 p. 133.

³¹ GA Res. 36/55, UN Doc. *A/RES/36/55* (1981).

³² G.A. Res. 47/135 (Dec. 1992).

include the UN Charter, the Universal Declaration of Human Rights 1948, the UN Convention on the Prevention and Punishment of the Crime of Genocide, (1948) the International Convention on the Elimination of All Forms of Racial Discrimination, (1966) the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) and the UN Convention on Rights of the Child (1989). It calls for tolerance of various kinds of minorities as it recognises that tensions in national and international life are invariably triggered by intolerance of majority communities. The Minorities Declaration urges states parties to take on board the legitimate interest of minorities before introducing national policies and programmes.

Section-III

Pakistan's Response to Human Rights at National and International Level

Constitution Of Pakistan (Rights mentioned in the Chapter on Fundamental Rights and Principles of policy)

The constitution of the Islamic Republic of Pakistan of 1973 is an impressive document in the regard that a separate chapter under Part-II of the constitution is dedicated to certain rights, which are available to every citizen of Pakistan. The Constitution contains 25 rights in all, which are contained in chapter 1 & 2. Fifteen of them pertain to civil and political rights where as the rest of the ten are social and economic rights. A balance has been maintained between the two types of rights (civil -political and socio-economic) according to Pakistan's geo-economic condition. Some of the rights provided in the constitution are given below:

- Inviolability of dignity of **man** Art. 14(1)
Under Art.14, Dignity of man and privacy of home, subject to law is inviolable. Under the same article it has been mentioned that no man shall be subject to any kind of torture for the purposes of extracting evidence.
- Security of person. Art. 9
No person shall be deprived of life or liberty save in accordance with law.
- Prohibition of slavery. Art. 11
 - (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.
 - (2) All forms of labour and traffic in human beings are prohibited.
 - (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.
- Equality before law. Art. 25
 - (1) All citizens are equal before law and are entitled to equal protection of law.
 - (2) There shall be no discrimination on the basis of sex alone.
 - (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.
- Safeguard as to arrest and detention. Art. 10
 - (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.
 - (2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

- The right to own property. Art. 23
Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.
- Freedom of religion. Art. 20
Subject to law, public order and morality:-
(a) every citizen shall have the right to profess, practice and propagate his religion; and
(b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.
- Freedom of assembly and association. Art. 16, 17
Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of Public order.
 - (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of [sovereignty or integrity of Pakistan, public order or morality].
 - (2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declare that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

The rights, which have been categorized in our constitution as Fundamental rights, are such that no organ of the state, whether it be Executive or legislature can act in their violation. Instances of violation of Fundamental rights both in the form of executive action or a law framed by the legislature can be challenged before the High Court or the Supreme Court. The effect of these guaranteed rights is that not only existing law which wholly or partly comes into conflict with the same shall be declared void but also any state action which is opposed to these rights shall be rendered void and ineffective in the eyes of law.

These rights can be abridged, suspended or eliminated in the constitutionally prescribed manner alone. Their operation may be suspended after a proclamation of emergency under Article 233 part X of the constitution. However under Article 4 of the Constitution the individual has been bestowed with the inalienable right to be dealt with in accordance with law. Article 4 read in combination with Article 8 which states that laws inconsistent with or in derogation of fundamental rights to be void, ensures that no action which is not in conformity with the fundamental rights can be taken against any person. Another advantage of Article 4 from the viewpoint of protecting the rights of the individuals is that as Article 4 is out side the chapter on fundamental rights, during the proclamation of an emergency provisions of Article 4 remains enforce & therefore the action of the government during the prevalence of the emergency can be called in question in the courts under Article 4.

Enforcement Mechanism

The constitution also provides for a judicial mechanism for the enforcement of fundamental rights. The High Courts under Art.199 and under certain circumstances the Supreme Court under Art.184 (3) can be moved if a certain action of the executive is believed to have violated these rights. Jurisdiction conferred on the High Court under Article 199 is known as the writ jurisdiction of the High Court. Constitutional jurisdiction (writ) is intended to foster justice and strike down orders, which are found to be in excess of authority or in absence of authority or patently in contravention of express provisions of law. Writ jurisdiction is discretionary in nature and even if the court finds that a party has a good case, it may refrain from giving him the relief, if greater harm is likely to be caused thereby than the one sought to be remedied.

Directive Principles of Policy

Chapter 2 of Part-II of the Constitution lays down directive principles of policy. It must be kept in mind that these principles are in the form of guidelines given by the constitution makers. They are not judicially enforceable. These provisions contained in Articles 29-40 differ from fundamental rights or ordinary laws of the land in the respect that while the latter are judicially enforceable, the former do not create any justifiable rights in favour of citizens. These principles of policy are required to be acted upon by persons performing functions on behalf of an organ of authority of the state but so long as there is no law carrying out the policy laid down in this chapter neither the state nor any of its organs, authorities or functionaries can violate any existing law or legal right on the pretext of following a principle of policy. These principles shall have to be implemented by legislation before they are made enforceable in the courts.

Among the more important of these principles are the direction to the government to take steps to ensure full participation of women in all spheres of national life, protection of the family, protection of minorities, promotion of educational and economic interests of backward classes or areas, to provide free and compulsory education, ensure inexpensive and expeditious justice, provide for all citizens within the available resources facilities for work and adequate livelihood, to provide for basic necessities of life like clothing food housing education etc.

Convention on the elimination of All Forms Of Discrimination against Women in National Context

At the United Nations, Pakistan was among those countries that initially supported the idea of drafting an instrument for women on the lines of Racial Discrimination Convention. In 1963, there were some 22 developing and eastern European countries which requested the commission on the Status of Women to draft a Declaration on the Elimination of Discrimination against Women and out of these one fourth were Muslim countries. Interestingly the countries that supported the idea initially were later on reluctant to sign and ratify the Convention on the Elimination of All Forms of Discrimination Against Women on the pretext that its provision are repugnant to Islam. In Pakistan, due to unstable political conditions and imposition of martial law regimes, not only the issue of women's rights received a major set back but also the process of signing and ratification of Convention on The Elimination of All Forms Of Discrimination Against Women was delayed for more than ten years.³³

³³ INGAD'S REPORT "Women's rights in Pakistan Next step Forward" December 1998. p22

Pakistan and the Child Rights Convention (CRC)

The UN general assembly adopted the CRC (convention of the rights of child) on November 20, 1990. A record 192 countries have signed the CRC. Pakistan has signed and ratified the CRC. On September 29 and 30, 1990 the World Summit for Children, attended by 71 heads of states, endorsing the convention, adopted a summit declaration and plan of action for survival, development and protection of children. Subsequently 181 countries ratified the summit declaration and plan of action that included 27 specific goals relating to children's health, nutrition, education and protection.

The issue of child rights came to the forefront in the country with Pakistan's ratification of the CRC in 1990, and its co-hosting the World Summit on Children. Pakistan ratified the CRC with the general reservation that the Convention would be interpreted in the light of the provisions of Islamic law as required by the Constitution. This reservation was withdrawn following the recommendation of the Ministry of Religious Affairs and the Council of Islamic Ideology and the decision of the Cabinet. The Ministry of Foreign Affairs has also formally conveyed the decision to the office of the Secretary General in New York.

As a party to the Convention Pakistan has under taken certain legal obligations. It is has become obligatory to bring changes in its national laws and to bring them at par with the provisions of CRC. The Juvenile Justice System Ordinance 2000 is an example as to how international conventions can bring changes in national laws. Enforceability and implementation of such laws is also a duty imposed on the state party.

Optional protocols to the CRC

Pakistan signed the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and Optional Protocol on Involvement of the Children in Armed Conflict on October 31, 2001.

The Optional Protocol to the CRC on Involvement of Children in Armed Conflict came in to force on February 12, 2001, following its ratification by New Zealand on November 12, 2001. The Optional Protocol prohibits the participation of children under the age of 18 in armed conflict, and their force recruitment or conscription.

The Optional Protocol on Sale of Children, Child Prostitution and Pornography entered into force on January 18, 2002 following ratification of protocol by Romania on October 18. The protocols require state parties to submit within two years an initial report to the committee on rights of child and subsequent reports to be merged with regular CRC periodic reports.

Report Writing

The ratification of the CRC led to the setting up of an elaborate structure for its implementation and monitoring. In 1980 a National Commission for Child Welfare and Development (NCCWD) was established which is supported by provincial chapters (PCCWD) as well as by a number of committees constituted for the purpose.

Following the ratification of the CRC, States Parties are under obligation to submit periodically a report to the Committee on the Rights of the Child, the monitoring and technical assistance

component of the CRC. The report must show steps taken by the governments for the realization of the rights contained in the CRC.

An initial report on the implementation of the Convention was submitted to the Committee on the Rights of the Child in 1993. Prepared by the NCCWD, the report laid more emphasis on goals and intentions than on concrete measures taken to ensure compliance with the CRC provisions.

A National Summit was held on September 29-30, 1997 in Islamabad in which all the concerned ministries, provinces, departments and NGOs participated to examine the entire text of the report in the light of UN Guidelines. Recommendations were recorded by consultants and incorporated in the report. More than 100 experts participated in this activity and contributed to the national report.

General Measures of Implementation

In order to harmonize national law and policy and to ensure conformity of legislative and other measures with the provisions of the Convention the Government has taken the following steps:

- The NCCWD, established in 1980 to follow up the recommendations of International Year of the Child, has been assigned the task of coordinating the implementation of the CRC. Its chapters have also been established in the four provinces and in AJK. A Cell on Child Rights has been established for FANA. The PCCWD, NWFP has been made responsible for coordinating child rights activities in collaboration with the provincial Home Department in FATA.
- A National Core Committee comprising representatives of the relevant Federal and Provincial governments and NGOs has been constituted.
- National Expert Committees have been constituted for priority areas such as health, education, juvenile justice system, birth registration, child labor and a committee to review the national plan of action has also been constituted.

The tasks before these Committees are as follows:

- To review existing legislation and policies.
- To identify gaps in legislation and policies.
- To suggest amendments or propose new legislation in the light of the CRC.
- To prepare consolidated programs and plans to facilitate the implementation of CRC.

NCCWD is also attempting to monitor violation of child rights with the help of various mechanisms. These include:

- The District based Monitoring System (DBMS)
- National Resource Center (Press Clippings).
- International Social Services (ISS). The NCCWD has been providing information to ISS a Geneva based NGO, regarding cases of Pakistani children overseas. Approximately fifty social reports were forwarded to ISS Geneva, and its branch offices in European countries, to settle the problems faced by overseas Pakistani children pertaining to custody, adoption, immigration and other social issues.
- Prison and Police (Home Departments NCCWD).
- Registration of children at birth.

The mechanisms provide feedback on government policies and plans on a regular basis.

Recent years have seen heightened activity in areas related to child labor and juvenile justice.

The Juvenile Justice System Ordinance 2000 has been promulgated effective July 1, 2000 as a step towards providing rehabilitation of juveniles. It bans the death sentence and whipping of children below the age of 18 years. The task of rehabilitation has been assigned to the Ministry of Social Welfare. The Ministry would delegate the responsibility to the Provinces and monitor the progress under the Ordinance. Government is also attempting to establish Legal Aid Centers with the efforts of young lawyers. Most of these centers are located in the vicinity of jails.

CRC Principal Areas and Government Policies

The CRC considers certain general principles to be fundamental to its implementation. Amongst these are the principles of non-discrimination, the best interests of the child, the rights of the child to survival and development, and the rights of the child to have his or her views respected. The Constitution of Pakistan recognizes the principle of nondiscrimination for all including impliedly children. Despite these provisions, cases of discrimination do crop up now and then and NGOs have been working with the government to get these principles enforced more effectively.

Protection of Rights

The CRC lays great stress on freedom, civil rights, protection of name and nationality, preservation of identity, freedom of thought, expression, religion, association and peaceful assembly, protection of privacy, and protection against torture and inhuman treatment. The protection of the right to name and nationality is guaranteed by the Constitution and implemented through citizenship laws. Efforts are also being made to improve birth registration laws, for this purpose, the Government of Pakistan has constituted a National Committee on the Registration of the Child at Birth. The existing laws too are being reviewed and efforts are being made to computerize the system.

Periodic report on the implementation of CRC

In February 2001, Pakistan submitted the second periodic report on the implementation of the CRC. The report was due to be submitted in 1996. The third periodic report was due in for submission in December 2002. The NCCWD and the Ministry of Social Welfare have initiated the process of preparation in involving federal and provincial governments, NGO's and experts. A matrix and UN guidelines for preparation of the report have been circulated.

Minority Rights In Pakistan

Introduction:

Throughout history, the position of religious minorities has claimed the attention of the international community. Rights of religious minorities have been one of the oldest human rights to be acknowledged internationally. Position of religious minorities poses difficult questions to which neither domestic laws nor international law have so far provided any conclusive solutions.

International legal obligations undertaken by Pakistan

Pakistan is a member state of the United Nations and as such a party to the UN Charter. It is signatory to the Universal Declaration Of Human Rights. It must be remembered that Pakistan is not a party to either the ICCPR or ICESCR, but it has been widely argued that the International Bill of Rights comprising the Universal Declaration Of Human Rights, the ICCPR and the ICESCR may be accepted as providing authoritative guidance.³⁴ The Universal Declaration Of Human Rights is frequently regarded as part of the 'law of the United Nations'.³⁵ The Covenants on the other hand, only have legal force if entered upon as treaties. Although Pakistan has not signed these covenants but the provisions of equality and non-discrimination outlined in the UN Charter and the Universal Declaration Of Human Rights therefore bind Pakistan

As regards the Religious Discrimination Declaration and the Minorities Declaration, these clearly are standard setting documents and can at best be seen as evidence of some kind of consensus emerging in the international community. Until such time as these are not translated into treaties, the provisions cannot be enforceable and are testimony to the unsatisfactory state of protection available to religious minorities in international law.

Constitutional Provisions relating to Protection of Religious Minorities:

Despite the fact that Pakistan has a diverse multi-ethnic and multi-linguistic population, religious minorities appear to be the only minority group recognised by the Constitution of Pakistan 1973.³⁶ The present Constitution of Pakistan for the first time prohibited discrimination on the basis of religion.

The equality provisions of the Constitution of Pakistan of which Article 25 is the foremost, is arguably the strongest protective right for all citizens including religious minorities. Similarly, Article 19 provides freedom of speech and expression, whereas Article 20 provides freedom to profess, practice and propagate ones' religion and to manage religious institutions, subject to law, public order and morality. Article 22 also ensures that members of various religious denominations are permitted to run and manage their own educational establishments. Provisions in the Constitution also lay emphasis on safeguards against discrimination in services on grounds of only race, religion, caste, sex, residence or place of birth.³⁷ Article 36 refers to safeguarding the legitimate rights and interests of minorities including their due representation in Parliament and public services. To this end, Part III and IV of the Constitution contain allocations of seats for representatives of religious minorities. Four parliamentary seats have been set aside for Christian minority in the national legislature and nine in each of the four provincial legislatures of the country.

³⁴ Persecuted Minorities and Writers in Pakistan Asia Watch, Vol.5 Number 13, September 19, 1993 page 1

³⁵ *Ibid.*, p.571.

³⁶ This anomaly is probably due to the fact that Pakistan came into existence on the basis of the unity of its Muslim population and any reference to its various ethnic, linguistic and cultural groups was thought to weaken its claim to independent statehood.

³⁷ Article 27 of the constitution of Pakistan

In keeping with its constitutional obligations, certain institutional arrangements exist for addressing issues and concerns of religious minorities. The Ministry of Religious and Minority Affairs has been constituted in this regard. This Ministry has the main task of (a) arranging pilgrimage of Muslims and non-Muslims to shrines in foreign countries as well as visits for religious purpose of non-Muslims to Pakistan. (b) Safeguarding the rights of the minorities, as guaranteed under the constitution (c) promotion of welfare of minorities (d) protection of minority's discrimination (e) representation in international bodies and conferences including the UN Sub-Commission on prevention of Discrimination of Minorities (f) International commitments and agreements of those agreements, and the implementation of those agreements concerning minorities.

The Federal Advisory Council for Minority Affairs is another relevant institution that performs the role of keeping the minority issues alive. The Council membership includes 65 non-government members that also include elected members of the National Assembly and the four Provincial Assemblies. Its function is to make recommendations to the government on issues such as policy matters as well as matters of specific concern to minorities.

Pakistan and Refugee Law

The 1951 Refugee Convention is the first truly international agreement covering the fundamental aspects of a refugee life. It defined, protected and gave a list of solutions to the problems faced by refugees.

Despite the fact that Pakistan has been hosting around 3 million Afghan refugees for over two decades yet so far Pakistan has not signed or ratified the 1951 Refugee Convention. The effect of not being a signatory is that Pakistan has no legal obligation to host these refugees but since Pakistan is a member of the United Nations therefore, Universal Declaration Of Human Rights imposes a moral obligation on Pakistan to address the issue of refugees in the Human Rights context.

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LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ECOSOC	Economic And Social Council
GA	General Assembly (United Nations)
ICCPR	International Covenant on Civil & Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IJC	International Court of Justice
ILO	International Labour Organisation
NGOs	Non Governmental Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nation High Commission for Refugees

GLOSSARY

Assembly: 1. A group of persons organized and united for some common purpose.
2. In many states, the house of legislation,

Asylum: 1. A refuge, an inviolable place of retreat for relative security. 2. In international law may be territorial (granted by a state on its own territory), or extra-territorial (granted in respect of, e.g., consular premises)

Child Abuse: Colloquialism applied to cases involving a pattern of physical, often sexual, assaults on a young child.

Civil Right: 1. The individual rights of personal liberty guaranteed by a constitution. Civil right include esp. right to vote, right to speak, right to move, the right of due process and the right of equal protection under the law.

Coercion: The use of physical or moral force in an attempt to interfere with the exercise of free choice.

Constitution: 1. Law of nation or state, establishing the conception, character, and organization of its government, as well as prescribing the extent of its sovereign power and the manner of its exercise. 2. The written instrument embodying fundamental law.

Convention: An agreement between states, esp. one less formal than a treaty General agreement, esp. agreement on social behaviour etc. by implicit consent of the majority.

Enactment: An act of parliament or part of an Act. Includes any by-law or regulation having effect under an enactment.

Inviolability: The quality or fact of being safe from violation.

Jurisdiction: 1. Power of a court to hear and decide on a case. 2. Authority to legislate. 3. Territorial limits within which legal authority may be exercised.

Magistrate: 1. A local official who possesses whatever power is specified in the appointment or statutory grant of authority. 2. A judicial officer with strictly limited jurisdiction and authority, often restricted to criminal cases.

Martial Law: 1. The law by which during wartime the army, instead of civil authority, governs the country because of a perceived need for military security or public safety. The military assumes control purportedly until civil authority can be restored. 2. A body of firm, strictly enforced rules that are imposed because of perception by the country's rulers that civil government has failed, or might fail, to function. Martial law is usu. Imposed when the ruler foresee an invasion, insurrection, economic collapse, or other breakdown of the rulers desired social order.

Petition: A written application praying for relief or remedy, as in a petition for divorce, petition of right. Available only where statute or rules of the Supreme court specifically prescribe it as mode of procedure.

Prejudice: Preconceived judgment. "Without prejudice" is used so as to attempt to protect the writer of a document against the constructing of its contents as an admission of liability and means, in effect, "without prejudice to right of writer of the statement".

Prohibition: An order of High Court preventing or prohibiting a body from acting, which will lie against an inferior tribunal or body in relation to decisions affecting an Individual's rights. Issued, e.g. to prohibit an imposition of sentence on accused if there has been no proper trial.

Proviso: 1. In a deed, a condition upon which its general validity is based. May begin ".. provided always that..." 2. In a statute. A clause qualifying or exempting from the enactment something which, but for the proviso, would have been included. It is constructed with the preceding part of the clause to which it is attached. It never enlarges an enactment unless that is unavoidable.

Rape: Defined under common law as unlawful sexual intercourse with a woman without her consent, by force, fraud, fear.

Ratify: Confirm or accept an agreement made in one's name by formal consent. In case of a state the consent is usually given by the legislature of the state.

Resolution: A formal expression of an opinion, intention, or decision by an official body or assembly (esp. a legislature).

Right: I. That to which a person has a just or lawful claim. 2. An interest which will be recognised and protected by a rule of law, respect for which is a legal duty, violation of which is a legal wrong: Salmond.

State: 1. The political system of a body of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people.

Testify: 1. To give evidence as a witness 2. (Of person or thing) to bear witness

Testimony: Evidence that a competent witness under an oath or affirmation gives at trial or in an affidavit or deposition. Also termed "personal evidence". Testimonial, adj.

Torture; The infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure.

Treaty: A formally concluded and ratified agreement between states.

Void: Empty; without force; of no legal effect. "A void contract is a paradox; in truth there is no contract at all".

Websites

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