

**ORIGIN AND DEVELOPEMNT OF
INTERNATIONAL HUMAN RIGHTS
LAW**

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Introduction

The term "Human Right" is comparatively of recent origin. But the idea of human rights is as old as the history of human civilization. Human rights are deeply rooted in the historical past. The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain.

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub continent over a very long stretch of time. As Jawaharlal Nehru notes, there is "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods." The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights throughout the history of human civilization. The Indian concept perceives the individual, the society and the universe as an organic whole. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity."¹

"Ultimately humanity has a commitment to history to make human rights a viable reality."²

¹ Origin and development of human rights
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² V.R. Krishna Iyer, Hun'an Rights and Inhuman Wrongs (New Delhi: B.R Publishing Co., 1990)
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Historical Foundations of Human Rights

The roots for the protection of the rights of man can be traced as far back as to the Babylonian laws. The Babylonian King 'Hammurabi' issued a set of laws to his people called 'Hammurabi's Codes.' It established fair wages, offered protection of property and required charges to be proved at trial. The Assyrian Laws, the Hittite laws and the Dharma of the Vedic period³ in India also devised different sets of standards by which rights of one was respected by another. All the major religions of the world have a humanist perspective that supports human rights despite the differences in their content.

Human rights are also rooted in ancient thought and in the philosophical concepts of 'Natural Law' and 'Natural Rights.' A few Greek and Roman philosophers recognized the idea of Natural Rights. Plato (427-348 BC) was one of the earliest thinkers to advocate a universal standard of ethical conduct. According to the Roman jurist Ulpian, natural law was that "which nature and the State assures to all human being."⁴ This meant that foreigners must be treated in the same way as one deals with one's co-patriots. It also important while conducting wars in a civilized manner.

The Republic (400 BC) proposed the idea of universal truths that should be recognized by all. Aristotle (384-322 B.C) wrote in Politics that justice, virtue and rights change in accordance with different kinds of institutions and circumstances. Cicero (106-43 BC), a Roman statesman, laid down the foundations of "natural law" and "human rights" in his work, *The Laws* (52 BC). Cicero believed that there should be universal human rights laws that transcend customary and civil laws. Sophocles (495-406 B.C) was one of the first to promote the idea of freedom of expression of opinion against the State. Stoics employed the ethical concept of natural law to refer to a higher order of law which corresponded to nature and which was to serve as a standard for the laws of civil society and Government. Later, Christianity, especially the writings of St. Thomas Aquinas (1225-1274), based this 'natural law' in a divine law, which was revealed to man in part discoverable by him through his God-given right of reason. The City States of Greece gave freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and right to access to justice to their citizens. Similar rights were secured by the Romans by the "Jus Civile" of the Roman law.⁵ Thus, the origin of the concept of human rights can be found in the Greco-Roman natural law doctrines of "Stoicism" (the school of philosophy founded by Zeno

³ P.N. Bhagwati, Supreme Court of India, Inaugural Address in the Seminar on Human Rights Organised by International Law Association (Allahabad Centre, 1980): 7. (Laws Promulgated in the Reigns of Urukagina of Lagash (3260 B.C), Sargon of Akkad (2300 B.C) and Hammurabi of Babylon (1750 B.C) cited in the Inaugural Address of Bhagwati. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁴ H.O. Agarwal, *Human Rights*, 7th ed. (Allahabad: Central Law Publications, 2004) 8. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁵ P.N. Bhagwati, Seminar on Human Rights 7 http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

and Citium), which held that a universal force pervades all creation and that human conduct should, therefore, be judged according to the laws of nature.

'The Magna Carta,' also called Magna Charta in Latin, consisted of 70 clauses. Though not a complete catalogue of civil rights and liberties as we know of today, it could, nonetheless, be described as the starting point of Constitutional history which shifted the focus from the power of the State to human rights since it has enshrined the principles of liberty, justice and even of equality and fraternity.⁶ It is a great tribute to the people of the United Kingdom to have preserved it, to nurse it and to nurture it over the years to serve as a beacon to humankind. Though the bundle of civil rights and liberties under 'the Magna Carta' was limited, its impact was revolutionary as it ushered in the realisation and recognition that individuals had certain rights and could claim these rights against the State and that the State was expected to respect and not to interfere with such rights and liberties of the individuals.

'The Magna Carta' granted by King John of England to the English barons on June 15, 1215 was in response to the stiff opposition to the heavy burden of taxation created by the third Crusade and the ransom of Richard I, captured by the Holy Emperor Henry VI. The English barons protested against the heavy taxes and were unwilling to let King John rule again without granting some concessions regarding their rights. The overreaching theme of "Magna Charta" was the protection against arbitrary acts by the King. Accordingly land and property could no longer be seized, judges had to know and respect laws and taxes could not be imposed without common counsel. There could be no punishment without a trial. The merchants were granted the right to travel freely within England and outside. The Magna Carta also introduced the concept of jury trial in its Clause 39, which provided protection against arbitrary arrest and imprisonment. Thus the Charta set-forth the principle that the power of the King was not absolute. In 1216-17 during the reign of John's son, Henry III, The Magna Carta was confirmed by Parliament and in 1297 Edward I confirmed it in a modified form. The Carta was reinforced in 1628 by the Petition of Rights and in 1689 by the Bill of Rights and thus formed the platform for Parliamentary superiority over the Crown and gave a documentary authority for the Rule of Law' in England. In addition to the above, the writings of St.Thomas Aquinas and Grotious also reflected the view that human beings are endowed with certain eternal and inalienable rights.

The concept 'fundamental rights of man' is found in the declarations and Constitutional instruments of many States. For instance, the 'Declaration of Independence' of the thirteen States of America in 1776 (The Virginia Declaration, 1776) and the Constitution of the United States of America, 1787,

⁶ Justice A.M. Ahamadi, inaugural Address on Fakhruddin Ali Ahamed Memorial Lecture on Democracy. Liberty and Changing Political Scenario, Date 29th July 2000, (New Delhi: GHAL B Institute Publication, 2000) 9. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

with amendments in 1789, 1865, 1869 and 1919 specified a number of rights. The Virginia Declaration of Rights affirmed that all men are by nature equally free and independent with certain inherent rights. The French Declaration of the Rights of Man and of Citizen of 1789 led other European States to include provisions in their laws for the protection of human rights. Sweden in 1809, Spain in 1812, Norway in 1814, Belgium in 1831, Denmark in 1849, Prussia in 1850 and Switzerland in 1874 made provisions for the fundamental rights of man.

The term "Natural Rights" eventually fell into disfavour, but the concept of "Universal Rights" took root. The phrase "The rights of man" was found unsuitable, as it was not universally understood to include the rights of women. It was Eleanor Roosevelt who suggested in 1947 that the term 'Rights of Man' be changed to 'Human Rights'.

Though the term 'human right' was first coined by Thomas Paine and used in his English translation of the *French Declaration of the Rights of Man and Citizen* (1789). Henry David Thoreau in his classical treatise - *Civil Disobedience*, expanded this concept.

Till the nineteenth and the beginning of the twentieth century, any attempt to enforce human rights was considered as an attack upon the concept of State sovereignty. However, there were exceptions to the above rule like the adoption of the Slavery Convention of 1926 and the establishment of the International Labour Organization in 1919. The Covenant of the League of Nations adopted at the end of World War I was silent on the issue of human rights.

The realization of the worth of human being led the Institute of International Law to issue a Proclamation of the Rights of Man in 1929. Instead of enumerating the rights of human beings, it laid down six duties of the State. The Proclamation of 1929 recognized the right of every individual to life, liberty and prosperity; the rights without any distinction as to nationality, sex, race, language; the right of every individual to the free practice in public or in private of any faith, religion or belief. The proclamation may be regarded as the first attempt towards the universalisation of human rights.

The turning point for the traditional approach came in the 1940s, in the midst of the extreme abuses of human rights in war-torn Europe during World War II. Atrocious crime; were being committed against humanity and there was a total suppression of fundamental human rights. The Nazi leaders of Germany had established a regime of complete lawlessness and tyranny. They had barbarously negated all human values and dignity within the territories under their occupation. It was at this time that the restoration of the freedom and rights of the people was accepted as one of the essential conditions for the establishment of international peace and security. The spirit of this principle was well reflected in the Proclamation issued by the American President Franklin D. Roosevelt on January

6, 1941, which came to be known as 'Four Freedoms.'⁷In his message Roosevelt declared, "Freedom means the supremacy of human rights everywhere."

In the Moscow Declaration of German Atrocities of October 30, 1943, the United States, the United Kingdom, France and the Soviet Union declared that the Germans should be held responsible individually for their violations of international law. A number of conferences and meetings were held before the formation of the United Nations as an international organization in 1945 (United Nations Declaration, 1942; Moscow Declaration, 1943; Tehran Declaration, 1943; Dumbarton Oaks Conference, 1944 and San Francisco Conference, 1945). A joint declaration was issued by President Franklin D. Roosevelt of the United States and Prime Minister Winston Churchill of the United Kingdom on August 14, 1941 in a document known as the 'Atlantic Charter.' The declaration of the United Nations signed on January 1, 1942 in Washington was the first document, which used the term human right.⁸ In this document the signatories who were fighting against the Axis Powers recognized the need to "preserve human rights and justice in their own land as well as in other lands."⁹

Origin and Development of Human Rights in India

The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, "is a humanitarian doctrine par excellence, dating back to the third century B.C". Jainism too contained similar doctrines. According to the Gita, "he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient" is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness the qualities that a good human being ought to have. The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.¹⁰

⁷ Document of the American Foreign Relations, Vol. 111, 1941): 26. Declaration by the American President, Franklin D. Roosevelt on January 6, 1941 came to be known as 'Four Freedoms' (Roosevelt Listed Freedom of Speech, Freedom of Religion, Freedom from Want and Freedom from Fear. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁸ H.O. Agarwal, International Law and Human Rights, 8thed. (Allahabad: Central Law publications, 2002) 656. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁹ Declaration of the United Nations signed on January 1, 1942 at Washington, signed by 26 states, including USA, UK, USSR and China. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

¹⁰ Origin and development of human rights http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

Ancient Hindu Law of Human Rights

Scholars who have spent long time in lucubration on the Hindu "Dharmashastras" and the "Arthashastras" and other legal treatises of the past have discovered an amazing system, which, inter alia, regulates the duties of Kings, judges, subjects and judicial as well as legal procedures. The central concept is Dharma, the functional focus of which is social order. The message is "Dharma" as the supreme value, which binds kings and citizens, men and women. Human rights gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharmashastras are clear and categoric.

The independence of the judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of Hindu monarchy, the administration of justice always remained separate from the executive.¹¹

Early Islamic Caliphate and human rights

Historians generally agree that Muhammad preached against what he saw as the social evils of his day,¹² and that Islamic social reforms in areas such as social security, family structure, slavery, and the rights of women and ethnic minorities improved on what was present in existing Arab society at the time.¹³ For example, according to Bernard Lewis, Islam "from the first denounced aristocratic privilege, rejected hierarchy, and adopted a formula of the career open to the talents."¹⁴ John Esposito sees Muhammad as a reformer who condemned practices of the pagan Arabs such as female infanticide, exploitation of the poor, usury, murder, false contracts, and theft.¹⁵ Bernard Lewis believes that the egalitarian nature of Islam "represented a very considerable advance on the practice of both the Greco-Roman and the ancient Persian world."¹⁶ Muhammed also incorporated Arabic and Mosaic laws and customs of the time into his divine revelations.¹⁷

¹¹ Ibid

¹² Alexander (1998), p.452 (http://en.wikipedia.org/wiki/History_of_human_rights#cite_note) 26/10/2013 03:17 pm

¹³ Lewis (1998), (1974), p.234, Robinson (2004) p.21, Haddad, Esposito (1998), p. 98 "Akhlaq", *Encyclopaedia of Islam Online*, Najmabadi (2007). Chapter: p.293. Gallagher, Nancy. *Infanticide and Abandonment of Female Children* http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

¹⁴ Lewis (1998) http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

¹⁵ Esposito (2005) p. 79 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

¹⁶ Lewis (1998) http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

¹⁷ Ahmed I. (1996). WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS. *Afrika Focus*. http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

The Constitution of Medina, also known as the *Charter of Medina*, was drafted by Muhammad in 622. It constituted a formal agreement between Muhammad and all of the significant tribes and families of Yathrib (later known as Medina), including Muslims, Jews, and pagans.¹⁸ The document was drawn up with the explicit concern of bringing to an end the bitter inter tribal fighting between the clans of the Aws (Aus) and Khazraj within Medina. To this effect it instituted a number of rights and responsibilities for the Muslim, Jewish and pagan communities of Medina bringing them within the fold of one community-the Ummah¹⁹ The Constitution established the security of the community, freedom of religion, the role of Medina as a haram or sacred place (barring all violence and weapons), the security of women, stable tribal relations within Medina, a tax system for supporting the community in time of conflict, parameters for exogenous political alliances, a system for granting protection of individuals, a judicial system for resolving disputes, and also regulated the paying of blood-wite (the payment between families or tribes for the slaying of an individual in lieu of lex talionis).

Muhammad made it the responsibility of the Islamic government to provide food and clothing, on a reasonable basis, to captives, regardless of their religion. If the prisoners were in the custody of a person, then the responsibility was on the individual.²⁰ Lewis states that Islam brought two major changes to ancient slavery which was to have far-reaching consequences. "One of these was the presumption of freedom; the other, the ban on the enslavement of free persons except in strictly defined circumstances," Lewis continues. The position of the Arabian slave was "enormously improved": the Arabian slave "was now no longer merely a chattel but was also a human being with a certain religious and hence a social status and with certain quasi-legal rights."²¹

¹⁸ Firestone (1999) p. 118, "Muhammad", *Encyclopedia of Islam Online*, Watt. Muhammad at Medina and R. B. Serjeant "The Constitution of Medina." *Islamic Quarterly* 8 (1964) p.4. http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

¹⁹ R. B. Serjeant, *The Sunnah Jami'ah, pacts with the Yathrib Jews, and the Tahrir of Yathrib: Analysis and translation of the documents comprised in the so-called "Constitution of Medina."* *Bulletin of the School of Oriental and African Studies, University of London, Vol. 41, No. 1. 1978*, page 4 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁰ Maududi (1967), Introduction of Ad-Dahr, "Period of revelation", pg. 159 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²¹ Lewis (1994) http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

Esposito states that reforms in women's rights affected marriage, divorce, and inheritance.²² Women were not accorded with such legal status in other cultures, including the West, until centuries later.²³ *The Oxford Dictionary of Islam* states that the general improvement of the status of Arab women included prohibition of female infanticide and recognizing women's full personhood.²⁴ "The dowry, previously regarded as a bride-price paid to the father, became a nuptial gift retained by the wife as part of her personal property."²⁵ Under Islamic law, marriage was no longer viewed as a "status" but rather as a "contract", in which the woman's consent was imperative.²⁶ "Women were given inheritance rights in a patriarchal society that had previously restricted inheritance to male relatives."²⁷ Annemarie Schimmel states that "compared to the pre-Islamic position of women, Islamic legislation meant an enormous progress; the woman has the right, at least according to the letter of the law, to administer the wealth she has brought into the family or has earned by her own work."²⁸ William Montgomery Watt states that Muhammad, in the historical context of his time, can be seen as a figure who testified on behalf of women's rights and improved things considerably. Watt explains: "At the time Islam began, the conditions of women were terrible - they had no right to own property, were supposed to be the property of the man, and if the man died everything went to his sons." Muhammad however by "instituting rights of property ownership, inheritance, education and divorce gave women certain basic safeguards."²⁹ Haddad and Esposito state that "Muhammad granted women rights and privileges in the sphere of family life, marriage, education, and economic endeavors, rights that help improve women's status in society."³⁰ However, other writers have argued that women before Islam were more liberated

²² Esposito (2005) p. 79 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²³ Jones, Lindsay. p.6224 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁴ Esposito (2004), p. 339 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁵ Khadduri (1978) http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁶ Esposito (2004), p. 339, Khadduri (1978) http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁷ Esposito (2005) p. 79 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁸ Schimmel (1992) p.65 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

²⁹ Maan, McIntosh (1999) http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

³⁰ Haddad, Esposito (1998) p.163 http://en.wikipedia.org/wiki/History_of_human_rights#cite_note_26/10/2013_03:17_pm

drawing most often on the first marriage of Muhammad and that of Muhammad's parents, but also on other points such as worship of female idols at Mecca.³¹

Sociologist Robert Bellah (*Beyond belief*) argues that Islam in its 7th-century origins was, for its time and place, "remarkably modern...in the high degree of commitment, involvement, and participation expected from the rank-and-file members of the community." This is because, he argues, and that Islam emphasized the equality of all Muslims, where leadership positions were open to all. Dale Eickelman writes that Bellah suggests "the early Islamic community placed a particular value on individuals, as opposed to collective or group responsibility."³²

³¹ Turner, Brian S. *Islam* (ISBN 041512347X). Routledge: 2003, p77-78
http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

³² McAuliffe (2005) vol. 5, pp. 66-76. "Social Sciences and the Quran"
http://en.wikipedia.org/wiki/History_of_human_rights#cite_note 26/10/2013 03:17 pm

Human Rights under the U.N. Charter

The first step in implementing the new directives on human rights was to articulate a vision for these rights that all the members of the United Nations could embrace. Eleanor Roosevelt, former First Lady and widow of Franklin Delano Roosevelt, lead the working group that would put together this document. It took two full years, 81 meetings, 168 amendments, and nearly 1,400 votes for the document to be accepted.

On December 10, 1948, the UN General Assembly (comprised of 58 member states at the time) accepted the Universal Declaration of Human Rights without objection, with eight countries including all six communist countries associated with the Soviet Union, South Africa, and Saudi Arabia.

Virtually all of the human rights identified in the UDHR systematically addressed and redressed the dehumanizing technique sand conditions imposed by Nazi Germany on Jews and other marginalized populations prior to and during World War II.³³ The framers of the declaration identified a range of safeguards intended to prevent egregious state behavior — as a consequence, human rights were self-consciously conceived as representing the interests of individual human beings against transgressions by the state.

This remarkably went directly against nascent human rights developments in the earlier part of the century in the aftermath of World War I, a period characterized by national and international treaties aimed at protecting the rights of groups vulnerable to oppression by the dominant majorities of states.³⁴ What was the reason for this sudden change? Twiss postulates:

“... The answer is not difficult to discern. As framed succinctly by one recent commentator, ‘The lesson of World War II was that emphasizing minorities and highlighting their differences through special protections encouraged groups to define themselves in opposition to others,’ and ‘Nazi racial doctrines appeared to be the inevitable result of such a course’.³⁵ That is, the very identification of groups as bearers of rights encourages oppositional conflict among them. So the framers of the UDHR followed another course, emphasizing the rights of individuals to essential civil, political, social, and economic conditions as well as their equality in such protections, with express avoidance of contributing to the power of groups”.

³³ Sumner B. Twiss 2004; see also Morsink 1999 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

³⁴ Sumner B. Twiss 2004:42 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

³⁵ Oestreich 1999: 113 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

This is not to say that special considerations for minority ethnic groups were not considered; indeed, various delegates to the Third Committee, which discussed and debated the draft of the UDHR, expressed precisely these concerns. However, they were answered by the blanket assumption that protecting individuals generally would also adequately protect members of minority groups.

This decision had the added consequence of giving the UDHR a decidedly individualistic, Western, and anti-socialist nature. Some also believe that the reason many of the values in the UDHR appear Western is that the Third World did not participate in great numbers when it was drafted; others recognize that the debates took place at a time when the great majority of Third World nations were still under colonial rule but maintain that the contribution of the Third World was by no means negligible.³⁶

Among the most active participants were Chile, China, Cuba, India, Lebanon, and Panama. At the General Assembly in 1948, Egypt, Ethiopia, Liberia, Afghanistan, the Philippines, Thailand, India, and Pakistan, as well as all of the Central and Latin American States were among the 48 voting in favor of the Declaration. Saudi Arabia, South Africa, and the Eastern European nations were the eight abstentions; no one voted against.³⁷

The Charter of the United Nations represents a significant advancement in the direction of faith in and respect for human rights. The appalling atrocities perpetrated by the Nazis against the Jews and other races during World War II led to a strong movement towards international protection of fundamental human rights.³⁸ The delegates from some of the States at the San Francisco Conference were in favor of the adoption of an even stronger provision concerning human rights. An attempt, which proved abortive, was also made to incorporate in the U.N. Charter an International Bill on Human Rights. Concern for human rights is woven into the U.N. Charter like a golden thread. Human rights have occupied a significant chapter in any story of the UN.³⁹ The Charter contains a number of provisions for the promotion of human rights and fundamental freedoms in the Preamble and in Articles 1, 13(b), 55, 56, 62(2), 68 and 76(c), which are as follows:

³⁶ Renteln 1988 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

³⁷ Alston 1983 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

³⁸ J.L. Briely, *The Law of Nations: An Introduction to the Law of Peace* edited by Sir. Humphrey Waldock, 6th ed. (London: Clarendon Press Oxford 1963) 292. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

³⁹ Louis Henkin, "The United Nations and Human Rights," *Inf. Org.* London: Summer, Vol.1, XXI, No.3, (1965) 504. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

- a) The first paragraph of the Preamble of the Charter lays down that "we the people' of the United Nations are determined to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large or small . . ."
- b) Paragraph 3 of Article I of the Charter lays down that the achievement of international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion shall be one of the purposes of the U.N.
- c) By the terms of Article 13, the General Assembly is empowered to initiate studies and make recommendations for the purpose of assisting the realization of human rights and fundamental freedoms without distinction as to race, sex, language or religion.
- d) Article 55 empowers the U.N. to promote universal respect for, and observance of human rights and fundamental freedoms for all without any distinction as to sex, race, language or religion.
- e) Article 56 provides that the members of the United Nations shall pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.
- f) Article 62 of the Charter of the U.N. empowers the Economic and Social Council to make recommendations for the purpose of promoting respect for and observance of the human rights and fundamental freedoms of all.
- g) As per Article 68 it shall be the responsibility of the Economic and Social Council to set up commissions in economic and social fields for the promotion of human rights. The Commission on Human Rights and the Commission on the Status of Women are the subsidiary bodies of the Economic and Social Council.
- h) Paragraph (c) of Article 76 stipulates that one of the basic objectives of the 'Trusteeship System' is to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The U.N. Charter did not contain a specific Charter on human rights and so an attempt was made to fill them out by drawing up the "Universal Declaration of Human Rights and Fundamental Freedoms"⁴⁰ in 1948 and with a view to implement the Universal Declaration, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and People's Rights, and the American Convention on Human Rights, and finally the International Covenants on Human Rights were adopted

Universal Declaration of Human Rights and the Commission on Human Rights

The idea for the protection of human right and fundamental freedoms was conceived in the 'Atlantic Charter' in 1941 and the "Declaration of the United Nations" in 1942. The first documentary use of the expression "Human Rights" is

⁴⁰ J.L. Briely, The Law of Nations: An Introduction to the Law of Peace edited by Sir. Humphrey Waldock, 6th ed. (London: Clarendon Press Oxford, 1963) 293
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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to be found in the Charter of the United Nations adopted at San Francisco on 25th June 1945. The preamble of the Charter, setting up an international organization called the United Nations, declares that the U.N. shall have in its objects, *inter alia*, a firm faith in fundamental human rights.

When the founders of the United Nations met at the San Francisco Conference in 1945 to draft the Charter of the U.N; the Latin American States wanted the Conference to discuss an International Bill of Human Rights. Panama wanted it to be incorporated as a part of the Charter. But the super powers were not interested in precise legal obligations and international action on human rights. As a result, the Charter contained a number of provisions, which are vague and are of a general nature for the promotion and protection of human rights and fundamental freedoms.

To implement the provisions of the U.N. Charter concerning human rights, the General Assembly of the United Nations decided to prepare an International Bill on Human Rights. With a view to achieve this, the General Assembly of the United Nations requested the Economic and Social Council on January 29, 1946 to get a report on the study conducted by the Commission on Human rights.⁴¹ The Commission as determined by its terms of reference prepared recommendations and reports on the following items.⁴²

1. International Bill of Rights
2. International declarations and conventions on civil liberties, the status of women etc.
3. The prevention of discrimination on grounds of race, sex, language or religion.
4. The protection of minorities
5. Other matters concerning human rights.

The Commission began work in January 1947, under the Chairmanship of Mrs. Franklin D. Roosevelt. In its first session, the Commission on Human Rights established a sub-commission for the Prevention of Discrimination and Protection of Minorities. The Commission in the same session appointed a committee known as Drafting Committee for the preparation of the draft: of an International Bill of Rights. It drafted the Universal Declaration of Human Rights, which was adopted by the General Assembly on 10th December 1948. Using the Declaration as basis, the Commission prepared an International Covenant on Civil and Political Rights and an International Covenant on Economic and Social and Cultural Rights in 1966.

⁴¹ United Nations General Assembly Resolution 7(1), January 29, 1946. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁴² G.S. Bajwa, Human rights in India implementation and Violation, Isedt. (New Delhi: Anmol Publications 1395)74. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

The Universal Declaration of Human Rights was adopted in 1948 and the two International Covenants were adopted in 1966 codifying the two sets of rights outlined in the Universal Declaration. International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights came into force in 1976. Later the General Assembly also adopted two Optional Protocols on Civil and Political Rights. The Optional Protocol to the International Covenant on

Civil and Political Rights, 1966 came into force on March 23, 1976 and the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of Death Penalty in 1989 came into force on July 11, 1991. The two International Covenants, together with the Universal Declaration of Human Rights and the Optional Protocols, comprise the 'International Bill of Human Rights'. Thus the International Bill of Human Rights is a collective term applied to five major international instruments.⁴³

The Preamble of the Universal Declaration incorporated a form of language in tune with the spirit of natural law by inserting, 'whereas recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' Keeping this declaration always in mind, it shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. The Universal Declaration dealt not only with civil and political rights, but also with social and economic rights.

Civil and Political Rights in the Universal Declaration

Articles 2 to 21 deal with those civil and political rights, which have been generally recognized throughout the world these are as follows:

1. Right to life, liberty and security of persons (Article 3)
2. Freedom from slavery or servitude (Article 4)
3. Prohibition against torture, inhuman or degrading treatment or Punishment (Article 5)
4. Recognition as a person before the law (Article 6)
5. Equality before the law and equal protection of the law without any Discrimination (Article 7)
6. Effective remedy before the national tribunals (Article 8)
7. Freedom from arbitrary arrest, detention or exile (Article 9)
8. Right to a fair and public hearing by an independent and impartial Tribunal (Article 10)
9. Presumption of innocence until proved guilty in a public trial with all Guarantees necessary for defense in criminal cases (Article 11)
10. Freedom from ex-post facto laws (Article 11)
11. Right to privacy, family, home and correspondence (Article 12)
12. Right to freedom of movement and residence within the borders of a State (Article 13)

⁴³ H.O. Agarwal, Human Rights, 7th ed. (Allahabad: Central Law Publications, 2004) 30. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

13. Right to leave any country, including his own and to return to his Country (Article 13)
14. Right to seek and to enjoy in other countries asylum from Persecution (Article 14)
15. Right to a nationality (Article 15)
16. Right to marry and to found a family (Article 16)
17. Right to own property (Article 17)
18. Right to freedom of thought, conscience and religion (Article 18)
19. Right to freedom of opinion and expression (Article 19)
20. Right to freedom of peaceful assembly and association (Article 20)
21. Right to participate in the Government of his country (Article 21)

Economic and Social Rights in the Universal Declaration

Articles 22 to 27 of the Declaration guarantee the following economic and social rights:

1. Right to social security (Article 22)
2. Right to work and free choice of employment (Article 23)
3. Right to rest and leisure [Article 24]
4. Right to a standard of living adequate for the health of himself and of his family (Article 25)
5. Right to education (Article 26)
6. Right to participate in cultural life (Article 27)
7. Right to good social and international order (Article 28)

The Declaration laid down under Article 29 contains certain limitations to these rights and freedoms, by providing that everyone has duties to the community in which alone the final and full development of his personality is possible. Paragraph 2 of Article 29 provides that these rights shall be provided to the individuals subject to just requirements of morality, public order and the general welfare in a democratic society. This condition made the rights provided in the Declaration not absolute.

Adoption of the Two International Covenants

The General Assembly on 16th December 1966 adopted the two Covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights.⁴⁴ It also adopted an Optional Protocol to the International Covenant on Civil and Political Rights. The General Assembly on 15th December 1989 adopted the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.¹⁶⁴⁵

⁴⁴ United Nations General Assembly Resolution 2200 A (XXI), December http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁴⁵ United Nations General Assembly Resolution 441128. December 15, 1989. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

The Covenant on Civil and Political Rights

The Covenant on Civil and Political Rights that consists of 53 Articles is divided into six parts. Article 1 which refers to the right of peoples to self determination states that all people have the right to determine freely their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resource without prejudice to any obligations arising out of international economic co-operation, based upon the principles of mutual benefit and international law. The Article, further states that in no case may a person be deprived of his own means of subsistence, and that the 'States Parties' shall promote the realization of the right of self determination and shall respect that right. The Covenant on Economic, Social and Cultural Rights also stipulated the above provisions under Article 1

Part II stipulated the rights and obligations of the 'States Parties' to the Covenant. It included the obligations of the States to take necessary steps to incorporate the provisions of the Covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the Covenant. The States Parties ensure equal right of men and women to the enjoyment of all civil and political rights.

Substantive Rights

Part III deals with the specific rights of the individuals and the obligations of the States Parties.

1. The right to life (Article 6)
2. Freedom from inhuman or degrading treatment (Article 7)
3. Freedom from slavery, servitude and forced labour (Article 8)
4. Right to liberty and security (Article 9)
5. Right of a detainee to be treated with humanity (Article 10)
6. Freedom from imprisonment for inability to fulfill a contractual obligation (Article 11)
7. Freedom of movement and the right to choose one's residence (Article 12)
8. Freedom of aliens from arbitrary expulsion (Article 13)
9. Right to a fair trial (Article 14)
10. Non-retroactive application of criminal law (Article 15)
11. Right to recognition as a person before the law (Article 16)
12. Right to privacy, family, home or correspondence (Article 17)
13. Freedom of thought, conscience and religion (Article 18)
14. Freedom of opinion and expression (Article 19)
15. Prohibition of propaganda of war (Article 20)
16. Right to peaceful assembly (Article 21)
17. Freedom of association (Article 22)
18. Right to marry and found a family (Article 23)
19. Rights of the child (Article 24)
20. Right to take part in the conduct of public affair, to vote and to be elected (Article 25)
21. Equality before the law (Article 26)
22. Rights of minorities (Article 27)

The above rights set forth in the Covenant are not absolute and are subject to certain limitations. While the formulation of the limitations differed in so far as details are concerned from Article to Article, it could be said that by and large the Covenant provided that rights should not be subjected to any restrictions except those which were provided by law, and were necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights consists of 31 Articles divided into five parts. Part I deals with rights of peoples to self-determination as provided in Article 1 of the Covenant on Civil and Political Rights. Other rights of the individuals are enumerated in Part III of the Covenant which include the following:

1. Right to work (Article 6)
2. Right to just and favourable conditions of work (Article 7)
3. Right to form and join trade unions (Article 8)
4. Right to social security (Article 9)
5. Right relating to motherhood and childhood, marriage and the family (Article 10)
6. Right to adequate food, clothing, housing and standard of living and freedom from hunger (Article 11)
7. Right to physical and mental health (Article 12)
8. Right to education including a plan for implementing compulsory primary education (Article 13)
9. Right relating to science and culture

Optional Protocol to the Covenant on Civil and Political Rights: 16 December, 1966

The International Covenant on Civil and Political Rights and the Optional Protocol are separate instruments. But they are related to each other inasmuch as only the State Parties to the Covenant can become parties to the Protocol. Both the Covenant and Protocol that came into force simultaneously on 23, March 1976 provide the individuals the right to make petitions before the Human Rights Committee. The Protocol provides a right to the State Parties to denounce it at any time by sending a notification to the Secretary General of the United Nations. Articles 1, 2 and 3 refer to the sources, subject matter and admissibility of communications. The Human Rights Committee is competent to receive communications from individuals.

Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of Death Penalty

On 25th November 1981, the General Assembly decided to consider the idea of elaborating a draft of a second Optional Protocol to the International Covenant on

Civil and Political rights."⁴⁶ With the efforts of the General Assembly and the Commission on Human Rights, a second Optional Protocol to the International Covenant on Civil and Political Rights was concluded in 1987 by which the State Parties to the Covenant, if they so desired, could take on the additional obligation of abolishing the death penalty. Death penalty involved an inevitable element of suffering and humiliation. It is a violation of human rights - the right to life and the right not to be subjected to cruel, inhuman, or degrading treatment. Further, the execution of death sentence is again an act of torture. The Protocol came into force on 11th July 1991. By 2nd November 2003 the Protocol had as many as 50 State Parties. Article 6 of the Covenant on Civil and Political Rights had referred to the desirability of the abolition of death penalty, as it is one of the measures for the enjoyment of the right to life. In order to abolish death penalty at the international level, the second Optional Protocol to the International Covenant on Civil and Political Rights was adopted by the General Assembly on 15th December 1989.⁴⁷

Draft Optional Protocol to the Covenant on Economic, Social and Cultural Rights

The Economic and Social Council by a resolution 17/1985 established a committee on Economic, Social and Cultural Rights in 1985. The committee since 1990 has devoted attention to the possibility of elaborating such an Optional Protocol and has discussed the issue at length on several occasions. At its sixth session in 1991, the committee supported the drafting of an Optional Protocol in order to ensure the practical implementation of the Covenant. The Vienna Conference on Human Rights gave added impetus to this initiative by asserting the declaration and programme of action that the Committee should follow. The Committee prepared a (draft Optional Protocol in 1996 at its 15th session, but it has not been officially adopted by the General Assembly.

International Judicial System (International Criminal Court)

The International Court of Justice has jurisdiction to the extent of deciding the cases of States only. Article 34(1) of the statute of the International Court stipulates that only States may be parties in cases before the Court. It means individuals have no access to the court. Neither the statute nor the rule of the court permits individuals to file a petition before the court unless the State sponsors it.

The Statute of the International Criminal Court, which came into force on July 1, 2002 and inaugurated on March 11, 2003 is likely to serve the useful purpose of curbing serious human rights violations. The Statute of the court is commonly

⁴⁶ United Nations General Assembly Resolution 36/59, November 25, 1981
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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⁴⁷ United Nations General Assembly Resolution 44/128, December 15, 1989
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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called "Rome statute"⁴⁸ Article 5 lays down that the court shall have jurisdiction to decide on the most serious crimes i.e.

- a) The crime of genocide
- b) Crimes against humanity
- c) War crimes
- d) The crime of aggression.

Article 7 of the Statute lays down that "crimes against humanity" means murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence, persecution against any identifiable group, or gender enforced disappearance of persons, the crime of apartheid, or other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Office of the U.N. High Commissioner for Human Rights (OHCHR)

In connection with the programme for reform of the United Nations, the office of the UN High Commissioner for Human Rights and the Centre for Human Rights were consolidated into a single office of the United Nations High Commissioner for Human Rights (OHCHR) on 15th September 1997. It is located in Geneva. The High Commissioner advises the Secretary General on the policies of the UN in the area of human rights.

Functions

- a) The OHCHR promotes universal enjoyment of all human rights.
- b) The office plays a leading role in human rights issues
- c) The office promotes international co-operation for human rights
- d) The office stimulates and co-ordinates action for human rights
- e) The office promotes universal ratification and implementation of international standards
- f) The office assists in the development of new norms
- g) The office supports human rights 'Organ and Treaty' monitoring bodies
- h) The office responds to serious violations of human rights
- i) The office undertakes preventive human rights actions
- j) The office promotes the establishment of national human rights infrastructures
- k) The office provides education, information, advisory services and technical assistance in the field of human rights.

Monitoring of Human Rights

⁴⁸ " Rome Statute of the International Criminal Court was adopted by the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Final Act of July 17, 1998. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf
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There are at least six core human rights treaties, which have set up committees to perform the task of monitoring States Parties in compliance with their obligation, which are:

1. Human Rights Committee (HRC) by the International Covenant on Civil and Political Rights; (ICCPR)
2. Committee on Economic, Social and Cultural Rights (CESCR) by the International Covenant on Economic Social and Cultural Rights (ICESCR)
3. Committee on the Elimination of Discrimination against Women (CEDAW) by the Convention on the Elimination of all forms of Discrimination Against Women.
4. Committee against Torture (CAT) by the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
5. Committee on the Rights of Child (CRC) by the Convention on the Rights of the Child
6. The Committee on the Racial Discrimination (CRD) by the Convention on the Elimination of all forms of Racial Discrimination.

Resolution 1503 (XLVIII) adopted by the Economic and Social Council in 1970 allows individuals and non governmental agencies to make petitions to the Human Rights Commission and its sub Commission on Prevention of Discrimination and Protection of Minorities and on situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights" and fundamental freedom.⁴⁹

Declaration on the Right to Protect Human Rights

The Universal Declaration of Human Rights laid down the rights of human beings. It did not stipulate the means by which these rights can be promoted and protected. Protection of the universally recognized human rights itself requires certain rights to be given to the individual, groups and organs of the States despite the fact that the prime responsibility and duty to promote and protect human rights lie with the State. The right to promote and protect human rights is essential for the prevention of violations of human rights. In order to provide this right to individuals and other groups in the States, the General Assembly on the recommendation of the Economic and Social Council adopted a resolution entitled 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society' to promote and protect universally recognized human rights and fundamental freedoms often referred to as the Declaration of the Human Rights Defenders on 9th December, 1998."⁵⁰ Some of the rights laid down in the Declaration are:

1. Everyone has the right to promote and to strive for the protection of human rights (Article 1)
2. Each State has a prime responsibility and duty to protect, promote and implement all human rights by adopting necessary measures (Article 2)

⁴⁹ Resolution No. 1503 (XLVIII) adopted by the Economic and Social Council in 1970. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁵⁰ United Nations Economic and Social Council Resolution, 1998133 of July 30, 1998. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

3. Each State shall adopt necessary legislative, administrative and other steps to ensure that the right to protect human rights is effectively guaranteed (Article 2)
4. Everyone has the right to meet or assemble peacefully, to form, join and participate in non-governmental organizations, associations or groups and to communicate with non-governmental or intergovernmental organizations for the purpose of promoting and protecting human rights (Article 5).
5. Everyone has the right to know, seek, obtain, receive and hold information about all human rights including the access to information as to how those rights are given effect in domestic, legislative, judicial and administrative systems (Article 6)
6. Everyone has the right to submit to Governmental bodies and agencies and organizations concerned with public affairs, criticism and proposal for improving their functioning (Article 8)
7. Everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of the right to promote and protect human rights (Article 9)
8. Individuals, non-governmental organizations and relevant institutions have an important role to play in making the public more aware of questions relating to human rights through activities such as education, training and research in these areas and to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities (Article 16).
9. Individuals, groups, institutions and non-governmental organizations have an important role to play in promoting human rights and contributing, as appropriate, to the promotion of the right of everyone (Article 18).
10. The State has responsibility to promote and facilitate the teaching of human rights at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teachings in their training programme (Article 15).
11. No one shall participate by act or by failure to act in activities violating human rights and no one shall be subjected to punishment or adverse action of any kind for refusing to do so (Article 10).
12. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights (Article 12).

Key International Conventions on Human Rights

Genocide

The term 'Genocide' is derived from the Greek term 'genos' (race) and the Latin verb caedere meaning to kill or to cut down. The General Assembly of the U.N. adopted the Convention of the Prevention and Punishment of Genocide,⁵¹ in December 1948. It came into force on January 12, 1951. As on October 10, 2001, the Convention had 133 State Parties

⁵¹ United Nations General Assembly Resolution, December 9, 1948
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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Apartheid

"Apartheid" was condemned by the United Nations as "a crime against humanity" in 1966. An International Convention on the Suppression and Punishment of the Crime of Apartheid was concluded on 30th November 1973.⁵² The Convention came into force on 18th July 1976.

Apartheid in sports

The General Assembly adopted the International Declaration Against Apartheid in Sports on 14th December 1977. On 10th December 1985, the General Assembly adopted the International Convention Against Apartheid in sports.⁵³

Torture and other Cruel, inhuman or Degrading Treatment or Punishment

The General Assembly on 9th December 1975 adopted a Declaration on the protection of all persons from being subjected to torture and other cruel, Inhuman or degrading treatment or punishment. On 10th December 1984 a Convention, known as the Convention Against Torture and Other Cruel or Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly

Slavery and Slave Trade

Under the auspices of the League of Nations, the International Slavery Convention was adopted on 25th September 1926. In 1953, the Protocol amending the Slavery Convention on 25th September 1926 was adopted which transferred to the United Nations, the functions and powers that had been undertaken by the League of Nations.

Forced Labour

In order to suppress forced labour, a Convention was conducted for the abolition of forced labour, which was adopted by the General Conference of the International Labour Organization on 25th June 1957. It came into force on 17th January 1959.

Traffic in Persons and Prostitution

In order to curb traffic on persons, a Convention for the Suppression of the Traffic on Persons and the Exploitation of Women was concluded on 2nd December 1949, under the auspices of the United Nations.⁵⁴

⁵² United Nations General Assembly Resolution 3068 (XXVIII), November 30, 1973. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁵³ United Nations General Assembly Resolution, December 10, 1985 http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

Elimination of Racial Discrimination

To make the provisions on racial discrimination binding on the States a Convention was adopted by the General Assembly on 21st December 1965, known as International Convention on the Elimination of all forms of Racial discrimination.⁵⁵

Elimination of Discrimination against Women

As early as 1946 the Commission on the Status of Women was established to deal with women's issues. The General Assembly on 7th November 1967 adopted a declaration on the Elimination of Discrimination Against Women and in order to implement the principles set forth in the Declaration, a Convention on the Elimination of all forms of Discrimination Against Women was adopted by the General Assembly on 18th December 1979.⁵⁶ In addition to the above Conventions three Conferences were held during the U.N. sponsored International Women's Decade (1976-1985), in Mexico City in 1975, in Copenhagen in 1980, and in Nairobi in 1985. The fourth World Conference on women held in 1995 (4-15 September 1995) in Beijing commonly called Beijing Conference stated that women's rights are human rights.

Rights of the Child

The Universal Declaration of Human Rights stipulated under paragraph 2 of Article 25 that childhood is entitled to special care and assistance. The above principles along with other principles of the Universal Declaration concerning the child were incorporated in the Declaration of the Rights of the Child adopted by the General Assembly on 20th November 1959. The Convention on the Rights of the Child was adopted by the General Assembly by consensus on the 30th Anniversary of the Declaration on 20th November 1989,⁵⁷ which came in to force on 2nd September 1990.

Right of the Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The Covenant on Civil and Political Rights under Article 27 provided that persons belonging to ethnic, religious and linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion, or to use

⁵⁴ United Nations General Assembly Resolution 317 (IV), December 2, 1949
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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⁵⁵ United Nations General Assembly Resolution 2106 (XX), December 21, 1965
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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⁵⁶ United Nations General Assembly Resolution 341180, December 18, 1979.
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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⁵⁷ United Nations General Assembly Resolution 44/25, November 20, 1989
http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am
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their own language. Inspired by the above, the General Assembly on 18th December 1992 adopted the Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic minorities.⁵⁸

⁵⁸ United Nations General Assembly Resolution 471135, Dated December 18, 1992. http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

Origin of Human Rights

The emergence of rights in political thought is generally regarded as relatively recent, though any historical study of rights reveals how indeterminate the philosophical charting of the evolution of rights has been.⁵⁹ Human rights are considered the offspring of natural rights, which themselves evolved from the concept of natural law. Natural law, which has played a dominant role in Western political theory for centuries, is that standard of higher-order morality against which all other laws are adjudged. To contest the injustice of human-made law, one was to appeal to the greater authority of God or natural law.

Eventually this concept of natural law evolved into natural rights; this change reflected a shift in emphasis from society to the individual. Whereas natural law provided a basis for curbing excessive state power over society, natural rights gave individuals the ability to press claims against the government.⁶⁰ The modern conception of rights can be traced back to Enlightenment political philosophy and the movement, primarily in England, France, and the United States, to establish limited forms of representative government that would respect the freedom of individual citizens.

John Locke, in his *Second Treatise on Government* (1690), described a “state of nature” prior to the creation of society in which individuals fended for themselves and looked after their own interests. In this state, each person possessed a set of natural rights, including the rights to life, liberty and property. According to Locke, when individuals came together in social groups, the main purpose of their union was to secure these rights more effectively. Consequently, they ceded to the governments they established “only the right to enforce these natural rights and not the rights themselves”.

Locke’s philosophy, known as classical liberalism, helped foster a new way of thinking about individuals, governments, and the rights that link the two. Previously, heads of state claimed to rule by divine right, tracing their authority through genealogy to the ultimate source to some divine being. This was as true for Roman emperors as it was Chinese and Japanese emperors. The theory of divine right was most forcefully asserted during the Renaissance by monarchs across Europe, most notoriously James I of England (1566-1625) and Louis XIV of France (1638-1715)

⁵⁹ (Renteln, 1988) “Human Rights: Historical Development,” (<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁶⁰ (Renteln, 1988) “Human Rights: Historical Development,” (<http://www.globalization101.org>) 01:00 am, 06/11/2013

Locke's principles were adopted by the founding fathers of the United States in the Declaration of Independence (1776), which stated:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

The echoes of Locke are unmistakable in the language of the Declaration of Independence. Similarly, the language used both by Locke and by the Founding Fathers clearly foreshadows the creation of a document like the Universal Declaration. These principles were further expounded and enshrined in the U.S. Constitution (1787) and Bill of Rights (1789).

Natural rights theorists have asserted the existence of specific rights — most notably the right to self-preservation (Hobbes) and the right to property (Locke). Because such theorists take the validity of fundamental rights to be self-evident, there has traditionally been little tolerance for debate. One scholar notes that natural rights “seemed peculiarly vulnerable to ethical skepticism”⁶¹. Nevertheless, natural rights were not widely contested as they were asserted in a limited universe of shared Western values⁶².

What, then, is a right, and how are human rights distinct from natural rights? For many philosophical writers, a right is synonymous with a claim. The Oxford English Dictionary defines a right as “a justifiable claim, on legal or moral grounds, to have or obtain something, or act in a certain way.” The classic definition of a human right is a right which is universal and held by all persons:

A human right by definition is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human⁶³.

⁶¹ Waldron 1984: 3 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁶² Renteln, 1988 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁶³ Cranston 1973: 36 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

One frequently cited definition of human rights posits four necessary requirements:

First, it must be possessed by all human beings, as well as only by human beings. Second, because it is the same right that all human beings possess, it must be possessed equally by all human beings. Third, because human rights are possessed by all human beings, we can rule out as possible candidates any of those rights which one might have in virtue of occupying any particular status or relationship... 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.'⁶⁴

The United Nations Office of the High Commissioner for Human Rights defines human rights as:

... Right inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. We are all equally entitled to our human rights without discrimination.⁶⁵

The primary element recurring throughout each of these definitions is universality — human rights are inalienable and fundamental rights to all persons are inherently entitled simply by virtue of being human. As we will soon observe, this crucial and existential element of universality is profoundly controversial and thus quite tenuous.

The innovation of human rights in the twentieth century extended the idea of individual rights to include all human beings, regardless of citizenship or state affiliation. Human rights helped reconstitute individual identity and freedom as something transcending national borders. As the atrocities of the World Wars made clear, there were times when the state became the citizen's greatest enemy and outside protection was his or her best and only hope. Before examining universality and other ideological conflicts concerning the idea of human rights, let us turn our attention now to the various types of rights that human rights encompass.

Three Generations of Human Rights

⁶⁴ Wasserstrom 1979: 50 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁶⁵ "What are Human Rights?" (<http://www.globalization101.org>) 01:00 am, 06/11/2013

There are three overarching types of human rights norms: civil-political, socio-economic, and collective-developmental⁶⁶. The first two, which represent potential claims of individual persons against the state, are firmly accepted norms identified in international treaties and conventions. The final type, which represents potential claims of peoples and groups against the state, is the most debated and lacks both legal and political recognition. Each of these types includes two further subtypes. Scholar Sumner B. Twiss delineates a typology:

Civil-political human rights include two subtypes: norms pertaining to physical and civil security (for example, no torture, slavery, inhumane treatment, arbitrary arrest; equality before the law) and norms pertaining to civil-political liberties or empowerments (for example, freedom of thought, conscience, and religion; freedom of assembly and voluntary association; political participation in one's society).

Socio-economic human rights similarly include two subtypes: norms pertaining to the provision of goods meeting social needs (for example, nutrition, shelter, health care, education) and norms pertaining to the provision of goods meeting economic needs (for example, work and fair wages, an adequate living standard, a social security net).

Finally, collective-developmental human rights also include two subtypes: the self-determination of peoples (for example, to their political status and their economic, social, and cultural development) and certain special rights of ethnic and religious minorities (for example, to the enjoyment of their own cultures, languages, and religions)⁶⁷.

This division of human rights into three generations was introduced in 1979 by Czech jurist Karel Vasak. The three categories align with the three tenets of the French Revolution: liberty, equality, and fraternity.

First-generation, "civil-political" rights deal with liberty and participation in political life. They are strongly individualistic and negatively constructed to protect the individual from the state. These rights draw from those articulated in the United States Bill of Rights and the Declaration of the Rights of Man and Citizen in the 18th century. Civil-political rights have been legitimated and given

⁶⁶ Vasek, 1977 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁶⁷ Sumner B Twiss 1998: 272 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

status in international law by Articles 3 to 21 of the Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights.

Second-generation, “socio-economic” human rights guarantee equal conditions and treatment. They are not rights directly possessed by individuals but constitute positive duties upon the government to respect and fulfill them. Socio-economic rights began to be recognized by government after World War II and, like first-generation rights, are embodied in Articles 22 to 27 of the Universal Declaration. They are also enumerated in the International Covenant on Economic, Social, and Cultural Rights.

Third-generation, “collective-developmental” rights of peoples and groups held against their respective states aligns with the final tenet of “fraternity.” They constitute a broad class of rights that have gained acknowledgment in international agreements and treaties but are more contested than the preceding types⁶⁸. They have been expressed largely in documents advancing aspiration “soft law,” such as the 1992 Rio Declaration on Environment and Development, and the 1994 Draft Declaration of Indigenous Peoples’ Rights.

Though traditional political theory presents liberty and fraternity as inherently antagonistic (and therefore would assert the incompatibility of “collective-developmental” rights with the preceding generations), progressive scholars argue that the three generations are in fact deeply interdependent. For example, Twiss argues that no single generation can be emphasized to the exclusion of others without jeopardizing personas and communities over time, including jeopardizing the very interests represented in the type or generation of rights being privileged⁶⁹. He offers examples of self-defeating imbalances that would result from the excessive prioritization of any one generation over another:

... to emphasize civil-political rights to the exclusion of socioeconomic and collective-developmental rights runs the risk of creating socially disadvantaged groups within a society to the degree of triggering disruption, which, in turn, invites the counter response of repression. To emphasize socioeconomic rights to the exclusion of civil-political rights runs the risk of ironically creating a situation where, without the feedback of political participation, the advancement of socioeconomic welfare comes to be hampered or inequitable. To emphasize collective-developmental rights to the exclusion of other types runs the risk of not only fomenting a backlash against civil-political repression but also of under-

⁶⁸ Sumner B Twiss, 2004(<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁶⁹ Sumner B Twiss 1998: 276 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

cutting the equitable distribution of the socioeconomic goods needed for the continuing solidarity of the society⁷⁰.

Twiss rejects alleged incompatibilities between the three generations of rights. He asserts that, at worst, there may be tension between such rights in specific societies and at periods of socio-historic transition, but this does not mean tensions cannot be solved in a way that respects all three generations of rights. Human rights are so thoroughly interconnected that it is difficult to conceive of them as operating properly except in an interdependent and mutually supportive manner.⁷¹

Although the three generations framework is a valuable conceptual tool for thinking about rights, it is worth questioning some of its assumptions. Does the notion of a progression of rights and the metaphor of age it is based on make sense? Do second generation rights create the background conditions necessary for the exercise of first generation rights, as certain sections of the International Bill of Rights suggest, or are it the other way around? Should second and third generation rights be viewed as simultaneous? Does one generation take precedence over another, or are all equally important? Should second and third generation rights even be considered rights, or are they something fundamentally different?

The three generations framework contains within it room for many of the key debates about the nature of rights. It also encourages us to take a critical approach in challenging our own assumptions about rights as we begin to think about some of the real-world problems involved in the application of human rights in the sections ahead

Major Ideological Tensions within Human Rights Doctrine

The UN asserts that human rights are, inter alia, universal and inalienable, interdependent and indivisible. However, tensions between categories of and perspectives on rights present significant obstacles to the acceptance of much less the realization of universal human rights. Major ideological conflicts include: positive vs. negative rights; rights vs. duties; individual vs. group rights; and the problem of universality as Western imperialism.

⁷⁰ Sumner B Twiss 1998: 276 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

⁷¹ Sumner B Twiss 1998: 276 (<http://www.globalization101.org>) 01:00 am, 06/11/2013

Negative vs. Positive Rights

Philosophers and political theorists make a distinction between negative and positive rights. A negative right is a right not to be subjected to an action of another person or group; negative rights permit or oblige inaction. A positive right is a right to be subjected to an action or another person or group; positive rights permit or oblige action. In relation to the three generations of human rights, negative rights are often associated with the first generation while positive rights are associated with the second and third generations.

Negative and positive rights frequently conflict because carrying out the duties conferred by positive rights often entails infringing upon negative rights. For example, the positive right to social welfare confers a duty upon the government to provide services. Carrying out this duty entails increasing state expenditures, which would likely require raising taxes. This would however infringe upon citizens' negative right not to have their money taken away from them. Because positive rights imply positive duties to take action whereas negative rights imply that others must only refrain from taking action, positive rights are generally harder to justify and require more complex ethical substantiation than negative rights.

Political philosopher Isaiah Berlin clarified the distinction in a famous lecture titled "Two Concepts of Liberty." If negative liberty is concerned with the freedom to pursue one's interests according to one's own free will and without "interference from external bodies," then positive liberty takes up the "degree to which individuals or groups" are able to "act autonomously" in the first place.⁷² In other words, what are the conditions under which individuals shape their understandings of their own free will? What gives individuals a positive idea about how they should act, rather than negative limitations on how they may not act?

There was some disagreement about the relative importance of these two conceptions during the debates over the Universal Declaration and its Conventions. While the U.S. had adopted a welfare state model under the New Deal reforms of President Franklin Delano Roosevelt, economic and social rights were not part of the American political tradition in the same way they had been for many continental European governments or the increasingly powerful Soviet Union.

⁷² "Two Concepts of Liberty" (<http://www.globalization101.org>) 01:00 am, 06/11/2013

American disinclination to positive liberty can be attributed in part to the ideological campaign against the Soviet Union during the Cold War. The Soviets gave a high place to the collective over the individual. This meant priority for positive liberty, which they believed empowered the state to take sweeping action to provide for the well-being and “self-realization” of its citizens, sometimes at the expense of individual civil and political rights, such as the right to political participation.

Many in the West, however, viewed the Soviet position skeptically as a veiled attempt to return to the excesses of authoritarianism that the United Nations system of governance was designed to have been set up to prevent. Great injustices have often been committed for the benefit of the collective good. Berlin and others were wary of “the way in which the apparently noble ideal of freedom as self-mastery or self-realization had been twisted and distorted by the totalitarian dictators of the twentieth century.” Insisting upon the primacy of negative rights, however, impedes the advancement of social justice by making it more difficult to justify allocating resources to help the underprivileged yet easy to justify inaction.

Ultimately, it remains an open question whether the positive and negative forms of liberty are two aspects of a common conception of rights or two distinct types of rights that are closely related without being identical.

Human Rights and Violence

Human rights, at their most basic level, seek to protect an individual’s right to life. Such protections range from the basic freedom from physical harm to highly complex forms of welfare assurance that encompass health, education, and the environment.

The very idea of human rights, as opposed to natural rights, emerged as a response to historical events that threatened the very right to exist for millions of vulnerable people. The horrors of the Holocaust led the people of the world to reassert the value of every human life and to create the international legal framework that ensured such atrocities would never occur again.

The practice of multilateral cooperation in matters involving violence had been well-established since the nineteenth century. A series of traditions and international agreements evolved to address the treatment of prisoners and soldiers on the battlefield. What was new about the genocides of the twentieth century was that they were perpetrated against noncombatant civilians who were largely defenseless.

Often, these extreme acts of violence were committed by governments against the very citizens whose rights those governments were meant to safeguard. International values and standards about the humane treatment of people in times of war needed to be extended to apply universally in all circumstances. It was clear that the rights of citizenship and strictly national enforcement mechanisms were no longer sufficient.

Conclusion

The analysis of various human rights provisions of the United Nations with special reference to the composition, function and procedure followed by the organs of the United Nations for the implementation of human rights, reveals the legal character of these provisions and the actual work done by all the principal organs of the U.N. The Economic and Social Council has contributed much to the protection of human rights through its various Commissions. The International Court of Justice, the International Criminal Court and the National Courts repeatedly quote the human rights provisions of the U.N. Charter. The U.D.H.R., the I.C.C.C.P.R. and the I.C.E.S.C.R. constitute a triad, often referred to as the 'Magna Carta of Humanity'.

Despite the numerous activities of the U.N. for the promotion and observance of human rights, many violations and denials of human rights still obtain all over the world. The concept of "National Sovereignty" continues to be a formidable obstacle in the observance of human rights. If the international community has a future, the United Nations will have to adjust itself to new circumstances. Though the United Nations have contributed much to the promotion, protection and observance of human rights yet their remains much more to be done. It has "sown for days ahead;" it has achieved more than what might have been expected, less than what might have been hoped.⁷³

Kofi Annan, Secretary General of the United Nations in his message to the world on the 50th anniversary of the Universal Declaration told humanity what its message is for the generation ahead.⁷⁴

It is the universality of human rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force. The struggle for universal human rights has always and everywhere been the struggle against all forms of tyranny and injustice - against slavery, against colonialism, against apartheid. It is nothing less and nothing different today. Young friends all over the world, you are the ones who must realize these rights, now and for all time. Their fate and future is in your hands. Human rights are your rights. Seize them. Defend them. Promote them. Understand them and insist on them. Nourish and enrich them. They are the best in us. Give them life.

⁷³ Louis Henkin, "The United Nations and Human Rights," *12.O rg.* Vol.1, XXI, No.3, (Summer, 1965): 504 http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

⁷⁴ Kofi Annan, message of 50th anniversary of the Universal Declaration of Human Rights in 1997, December 13, 1997, cited by V.R. Krishna Iyer, "The Dialectics and Dynamics of Human Rights in India, Yesterday, Today and Tomorrow," Tagore Law Lectures, (Calcutta: Eastern Law House, 1999) 26 http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/10/10_chapter%202.pdf 11.58 am 08/11/13

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